

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2035
77-2135

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-2035
77-2135

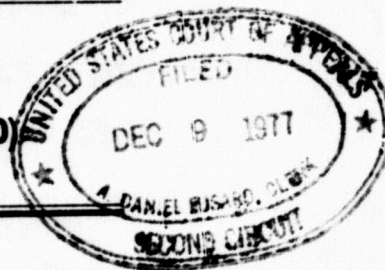
UNITED STATES *ex rel.* LOUIS WOLFISH, *et al.*,
Petitioners-Appellees,

—v.—

HONORABLE EDWARD LEVI, *et al.*,
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume IV (Pages A-1201 to A-1600)



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gs2

Taylor - direct

1899

1 control the situation.

2
3 The security monitoring systems in the situ-
4 ation generally go into effect in the evening, when
5 traffic quiets down. They then monitor areas where
6 there is supposed to be no traffic. And then, if traffic
7 is in that area, the camera then will very effectively
8 point out that there is unauthorized traffic in a
9 particular area.

10 The alarm system will monitor certain doors
11 if they are opened and give us an alarm, and that is
12 very effective. It will also monitor certain windows
13 if they are broken and give us an alarm, and that is very
14 effective.

15 In the last year and a half in the history
16 of the MCC we found that in one case an inmate went through
17 a wall as opposed to trying to go through the windows,
18 because he knew the windows were alarmed. We also found
19 that the walls had some defects in terms of reinforcement
20 rods that were supposed to have been placed there by the
21 contractor and were not.

22 We've had to go through the MCC since that time
23 and put reinforced steel sheathing in all of the rooms
24 occupied by inmates, at least on the outside of the
25 building, and we will be continuing with that project on

1900

gs3

Taylor - direct

the north side just as soon as money, staff and time is available.

Now, that means that the walls in the general purpose areas or the administrative areas are made of the same material and that they are vulnerable, and there is no alarm for that kind of vulnerability, and that the doors in the areas where we have staff, leading to and from areas, are not alarm doors because they were not intended to alarm. So they are vulnerable.

The cameras themselves that do the monitoring are vulnerable, and we are going to correct those just as soon as, again, we have the money and the time and the staff to do it. And if you've been through the facility, and I know you have, and a number of other people in the courtroom, you know that the cameras plug into the wall just like any clock and they can be unplugged like any clock, and that's it, and then they are inoperable.

So to say that the sophisticated electronic equipment that we have at the MCC takes the place and prevents escape and so forth I think would be a tremendous error.

Q Are there back up systems of security?

A Yes. Most of our back up systems involve staff, and for every institution that we operate we don't

gs4

Taylor - direct

1901

1
2 rely just on one system to prevent escapes.

3 For an example, if you would like an example
4 I could tell you, in the visiting room we have a couple,
5 three or four back up systems there to prevent the
6 escape that we had back in April of last year, and one
7 of them is that the entrance coming into the visiting room
8 from the units, from the inmate quarters area, is controlled
9 by the quarters officer. The door leading out of that
10 visiting area is then controlled by the visiting room
11 officer, who is on the other side of it. The door
12 leading out of this area is controlled by a control center,
13 and the elevator leading from the floor down is controlled
14 by an master control center on the first floor.

15 In addition to that, we stamp visitors who
16 come in with a pass word of the day and change that
17 pass word every day so that we can minimize the pos-
18 sibility of duplication.

19 We also paint the inmate's hand going into
20 the visiting room with an invisible blue ink.

21 And so we look for a couple of things there.
22 But even with all these systems, these systems are
23 designed so that if there is a breakdown in one area we
24 can possibly catch it in the other area, or if we have a
25 corrupt official on one end we might have an honest official

1 gs8 Taylor - direct

2 they come in during a special visiting time for attorneys
3 only between 4.30 and 4.30 each evening.

4 The 4.30 to 6.30 conference room is set up on
5 the 11th floor in the regular visiting room. It is
6 reserved for attorneys and their clients only, and no
7 advance notice is required.

8 If attorneys need to come in for any other
9 time and any other purpose and require private rooms,
10 for example, then they can give us 12 hours in advance
11 notice and we'll provide them with a room on the third
12 floor and they can come in any time from 8 to 8.30 or so.

13 We also make exceptions for people who for
14 some reason or another haven't been able to give us a 12-
15 hour advance notice, when we feel that it is legitimate,
16 or for people who just aren't familiar with our visiting
17 policy, and all of our staff who are involved with working
18 with attorneys have been instructed to expedite them as
19 rapidly as possible and to give them every possible
20 consideration because of their schedules and so on.

21 Q What is the average number of special attorney
22 visits that occur on a weekday?

23 A The ones where we have a 12-hour advance
24 notice?

25 Q Yes.

gs9

Taylor - direct

1906

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2 A I would say that we have anywhere from six to
3 12 of those visits in one day. We have permanent
4 records on it which would be more concise, if you
5 need it.

6 Q What, if any, changes in the attorney visiting
7 procedures --

8 THE COURT: Are those special visits weekend
9 only or all during the week?

10 THE WITNESS: They are all during the week,
11 your Honor, seven days a week, as long as we get a call.

12 Q What, if any, changes in attorney visiting
13 procedures are planned for the MCC?

14 A Well, there are a number of changes planned
15 for attorney visiting as well as regular visiting, and it
16 is kind of difficult to discuss one without discussing the
17 other.

18 Q Let's first take the attorney and then we'll
19 discuss the other.

20 A Okay. We are in the process right now of
21 building an attorney conference room.

22 Q Where is that room going to be located?

23 A It will be on the third floor, and the lower
24 half of the partition for the room has already been built.

25 We have had the contractors in last week and

gs10

Taylor - direct

1 they are cutting and measuring the material and have
2 indicated to us that they expect to be in and have the
3 upper half of the attorney conference room finished in
4 three weeks.
5

6 Knowing contractors as I do, I wouldn't want
7 to be held to that date. But they indicate that they can
8 it finished in three weeks.

9 The partition will be similar to the kind of
10 partition you've seen now in our front lobby and other
11 office areas down there.

12 The room will be carpeted, several small
13 conference tables will be provided with Plexiglas sides
14 for privacy, or at least for protecting conversations, and
15 five offices in the back of that area will also be used
16 for private attorney conferences. The doors will be
17 removed for supervision, but no alterations will be made to
18 those offices.

19 The entire area will be supervised by a wide-
20 angle camera with a monitor about 30 feet away.

21 A And how will attorneys be processed and get
22 up to the room on the third floor?

23 Q In addition to that, we are developing a new
24 desk in our front lobby for processing visitors and adding
25 a second processing line that will be used primarily for

1 gsll Taylor - direct

2 attorneys. They will be able to walk through the
3 security area, past the institution, using an attorney
4 identification card that we are developing, walk by the
5 control center into the back area, and then we are opening
6 a stairwell toward the end by those secure elevators that
7 will lead to the third floor. It will require cutting
8 through the wall at the third floor and placing another
9 security door in the stairwell so that traffic can't go
10 beyond that point.

11 Attorneys then will be able to walk up to the
12 attorney conference room on the third floor and have their
13 visits there. When the visit is complete, they will
14 be able to walk down unescorted to the first floor.

15 Q How long will the attorney visiting room be
16 opened during the day?

17 A That attorney visiting room, when it goes into
18 effect, will be open from eight in the morning until 8.30
19 at night.

20 Q And how many days a week will it be open?

21 A Seven days a week. Special arrangements --
22 by the way, we can make special arrangements for beyond
23 that time up to midnight.

24 Q What is the MCC policy with respect to inmates
25 bringing legal papers or writing instruments into attorney

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Taylor - direct

visits?

A An inmate can take legal documents into the visiting room after they have been inspected by the officer and a pencil and a pen as well, as long as they are inspected by the officer.

Q When you say "inspected by the officer," what do you mean?

A He thumbs through it for any kind of contraband that he might be looking for, including money or things of that nature, and then he just goes through.

Q Is the policy for the officer to read the papers?

A No.

Q What is the MCC policy with respect to the number of individuals in a visiting room at any one time?

A We've established a limit of 25 in the visiting room currently.

Q What is the rationale for that limitation?

A Well, it goes back again to the April escape, in which there were a large number of people in the visiting room, and there are several reasons why we have now restricted it to 25.

One is supervision of the people in the visiting

1 gsl3

Taylor - direct

2 room, to guard against inappropriate behavior in the
3 visiting room, to guard against passing of contraband and
4 any other kinds of maneuvers that may lead to breach of
5 security or escape.

6 And the second issue I think that we have to
7 concern ourselves with is just the environment of the
8 visiting room and maintaining some sort of dignity and
9 privacy and air balance, air that is suitable. If you
10 get an overcrowded room, it has a tendency to get warmer
11 and the air staler, and so forth.

12 Q It has been stipulated that since April of
13 last year the bathrooms in the visiting rooms have been
14 locked although recently they have been opened. What was
15 the rationale for locking those bathrooms?

16 A Those bathrooms were locked immediately after
17 the escape last April, and there were a number of factors
18 that we considered and finally locking those bathrooms.

19 Number one, the bathrooms are located inside
20 the visiting area, where the visitors and the inmates visit,
21 as opposed to being where the visiting room officer
22 station is. So that they are difficult to control.

23 Number two, there was a silent door which was
24 in direct sight line between the visiting room officer and
25 that bathroom that had to be altered.

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Taylor - direct

1911

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2 Number three, the locks on the bathrooms were
3 the type that could be locked from the inside and not
4 uneasily locked from the outside without a special sort
5 of Allen wrench piece of equipment.

6 And the inmate who escaped used the bathroom
7 facility to change his clothes, to shave his face, and to
8 walk out as a visitor.

9 Under those circumstances, we locked the
10 bathrooms in the visiting rooms until such time as we could
11 make alterations to reopen them.

12 Q Have in fact alterations been made?

13 A Yes. There have been several alterations
14 made, and the bathrooms have been reopened last week.

15 The alterations that were made were that the
16 silent doors were taken down and cut and windows placed
17 in them so that the visiting room officer can now see
18 through them.

19 The parts for those doors to complete that
20 job were ordered about three months ago. The locks have
21 come in and been changed, so that now the bathrooms can
22 operate under key control. The locks for those bath-
23 rooms were ordered about six or seven months ago.

24 In addition, a partition in the front lobby
25 has been installed which enables us to slow traffic down

Taylor - direct

gs15

and, again, check people coming out of the visiting rooms.

We first began discussing the possibility of getting that partition immediately after the escape and, as a matter of fact, had talked to the central and regional office prior to the escape and advised them that we had a weakness in our security system through the visiting rooms and we felt that that kind of partition would be advisable.

That partition has now been installed, and after long periods of negotiation with the central office and consultation with environmental people about the ventilation systems and so forth, we were able to put it in.

Q With respect to the inmate visiting at MCC, what, if any, changes are under consideration by the administration?

A Well, there are several changes that are taking place. First of all, the visiting rooms themselves during off-visiting hours will be used for family counseling, using probation officers and counselors from the institution. In other words, after regular visiting hours, a wife or a husband and/or some of their children will be able to meet with the probation officer, the

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Taylor - direct

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counselor and the inmate for an hour, an hour and a half counseling session each week. Those probation officers are currently in training for that program. The idea was first developed about three or four months ago between myself and Mr. Heron, the Chief Probation Officer in the Eastern District.

In addition to that, inmates who have 10 days or less on their sentence can now receive nickels and dimes in the amount of \$2 from visitors to the visiting room.

And in the front lobby area I mentioned we have placed partitions there so that we can, one, slow down the traffic of people coming out of the visiting room and, two, separate the persons who have been searched from persons who haven't been searched, to eliminate and to minimize the possibility of contraband going up into the units.

We also had a task force appointed in October of last year to look at other kinds of recommendations to improve the visiting procedures.

Q When you say a task force, who was appointed to that task force?

A The task force consisted of two correctional officers, both of whom had worked the visiting desk just

gs17

Taylor - direct

1914

prior to their appointment on the task force - Glenn Desme and Glenn Summers. And we also had a unit manager and the case manager coordinator assigned to that task force.

They made several recommendations, all of which have been or are in the process of being implemented.

Q Did they prepared a written report concerning the recommendations?

A Yes. They provided me with a written report.

Q Showing you what has been marked as Respondent's Exhibit I for identification, I ask you if you can identify tat document?

A Yes. That's the recommendations from the task force.

MR. CORSI: At this time, your Honor, we would offer it into evidence.

(Continued on next page.)

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Taylor - direct

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MR. YOUNG: May I ask whether this document

has ever been turned over to the petitioner?

MR. CORSI: No, it hasn't.

MR. YOUNG: Then I object to its admission,
your Honor.

THE COURT: Why didn't you show it to him
sooner?

MR. CORSI: Your Honor, I got it this morning.

THE COURT: All right. We'll allow it.
If you have any trouble meeting its contents, Mr. Young,
let us know. We'll talk about it.

(Respondent's Exhibit I was received in
evidence.)

BY MR. CORSI:

Q Mr. Taylor, is there presently a water fountain
in the visiting room on the third floor?

A No. And as a result of a BP-9 it was sub-
mitted by one of the inmates in that unit, which is a
request for administrative remedy, it was suggested that
a water fountain be installed. I agreed. A water
fountain was ordered. It's arrived and should be
installed some time in the next few weeks.

I might, if I could, Mr. Corsi, also I'd like
the Court to know about the Sesame Street program and a

dws

number of other things that involve the visiting.

Q I wanted to get into the further changes that are occurring or have occurred with respect to visiting at MCC. Let's take the operation down at the visiting desk or where the visitors process.

A One of the problems in processing visitors that it's been a time consuming thing. And as a result of the task force recommendations we bought some especially made file cabinets that are eight by ten Acme visible file cabinets that will fit a new form that was also recommended by the task force. And it simply calls for calling out a leaf and we'll have one special section for each floor, flipping it up to the man's name and circling the date of the visit and putting them back in.

I state that because I think that this process will probably reduce the file processing time by 30 percent. We are also going to build a new desk for processing and the book-drops and tables for processing personal property.

We have a program called Sesame Street. It's a day care program for children of visitors who visit the institution, and that operates four days a week. The children are allowed to go up and see their parents if they like, but if they get fussy and the parents would

1 dws
2 like to then have us take care of them for the remainder
3 of the visit they can come back down and go into the
4 Sesame Street program where we have a contract person
5 working with Sesame Street material and a day care
6 program.

7 There are several games and other structured
8 type of activity in that program for them. We also have
9 lockers for visitors coming in. All of the their,
10 although they're not operable at this point because of
11 some locking problems they will be shortly for people to
12 place theif valuables in.

13 Q Concerning the visitors being transported up
14 to the visiting rooms presently under whose control are
15 those elevators?

16 A Well, they're presently under the control of
17 the control center. However, some alterations have been
18 made on those elevators which will allow us to operate
19 them now by the visiting front lobby officer. He can
20 take the visitors to the levator, turn a key, press the
21 floors and the elevator will respond in the same manner as
22 it did for the control center.

23 In addition we have just finished the com-
24 pletion of the new office in the front next to our
25 cashier's office for commissary and visitors for two

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2 a week -- two hours a day, five days a week will be able
3 to drop off money directly to be placed directly into the
4 commissary account of inmates at the institution.

5 Q Presently how many processing lines are there
6 for the visitors?

7 A There is one processing line and when the new
8 desk is finished there will be two.

9 Q What if any changes are under consideration
10 for the visiting schedule for inmates?

11 A Well, we've talked about the visiting schedule
12 for a long time. It's a subject of discussion ever
13 since we opened because of the large number of visitors
14 we receive, and we looked at ways of making it more
15 flexible and yet not using more staff than we could afford
16 and so on. About six months ago we began talking again
17 about changes in our visiting schedule that we thought
18 would make it more flexible and through you we submitted
19 our proposals to the public defender as well, Mr. Young.

20 He looked at it I think and probably
21 discussed it with several inmates and it was returned
22 to us and on December 6 we gave a copy of that proposal
23 to the inmate population and asked for their comments.
24 Incidentally I received about three or four comments
25 and that was it.

1 dws

2 I've looked at it since and after discussing
3 it with some of our staff and with some visitors to the
4 institution and so forth we've elected to go beyond the
5 proposal that was agreed Upon between us and the U. S.
6 Attorney's office and the public defender's office.

7 The policy statement which is being adopted
8 now and will be implemented as soon as the attorney confer-
9 ence room is finished calls for visiting six days a week
10 from 12.30 until 4 and from 5.30 until 8.30 for all
11 units. In addition to that --

12 Q On what days would that occur?

13 A Monday through Sunday. I mean Tuesday through
14 Sunday. Monday would be an off day for catching up on
15 the files and so on.

16 Q How many hours of visiting would be available
17 during the week on a weekday for each unit?

18 A Six and a half hours total.

19 Q And on the weekends how many hours of visiting
20 would be available for each unit?

21 A It would be from some units in the morning
22 on Saturdays from 8.30 until noon. And then from 12.30
23 until 3.30.

24 Q For the other units?

25 A Yes.

dws

Taylor - direct

1920

Q So on Saturday and Sunday there would be approximately --

A Three hours.

Q Three and a half hours for each unit?

A With the exception of the 11th floor, and we're going to increase the visiting for the 11th floor. And it was suggested, I think by a number of people and maybe even Mr. Young, and I agree with it, that the visiting should be increased to accommodate those crowds and we are therefore during the offtimes on the weekends, that 11th floor South will visit all day on Saturdays and Sundays.

On one day in the morning they will use the North and the South visiting room and one day in the afternoon they will use both the North and South visiting room. Now that was started last weekend and will continue even after we make the new changes in our policy.

MR. CORSI: Your Honor, if I may just so that can make the record complete the discussions that were had between Mr. Young's office and my office concerning a revised schedule was without prejudice to the other side's position that even further expansion or distribution of hours should occur.

THE COURT: All right. I hope that's without

dws Taylor - direct 1921

prejudice to your entering into consent arrangements at any time before final decree in this case on any aspects of it including that. We've talked about that.

MR. CORSI: Yes, your Honor.

MR. YOUNG: Your Honor, along that line I just point out that a lot of the things that Warden Taylor is testifying to are things we have not received any information on until today.

THE COURT: I've indicated to you that anything you can agree on that I didn't have to decide is fine with me.

Q You've indicated that 11 South, the revised expanding schedule has already gone into effect. When is the remaining portion of the proposal to take place?

A Well, it can't go into effect until the attorney conference room is finished and we move the attorneys out of the 11th floor visiting area.

Q In devising the new schedule that you propose what factors did you take into account in coming to that decision?

A Well, I think probably visiting is one of the most important programs we can provide at the, at the detention center, any institution, but more importantly

dws

Taylor - direct

1922

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2 probably at a detention center and because it's at a
3 time when people are coming to jail maybe for the first
4 time, or who have just recently been taken away from their
5 families.

6 There is a great deal of anxiety I think on
7 the part of the families as well as the inmate who is
8 confined. It's often through his family that he makes
9 arrangements for his own legal defense even though he may
10 have an attorney. They do much of the leg work
11 for him. And I think if we can maximize the opportunity
12 for visits then we ought to be able to do it, but before
13 we were able to make that decision I think we had to take
14 into consideration where we were going to get the staff
15 and whether the programs would be affected by moving that
16 staff from whatever they were doing to the new expanded
17 program, and whether or not it would have an adverse
18 effect on other areas in the institution including security
19 and so forth.

20 And balancing what you're going to do with
21 limited staff sometimes is not always as easy as concise
22 a job as you would like it to be and it requires I think
23 the input from a lot of different people and the consider-
24 ation of a lot of different factors.

25 Q Have there been occasions in the past when

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2 visiting hours have been extended?

3 A Yes. We've -- I remember one case in
4 particular unfortunately when I was there on a Sunday
5 and the crowds were such that we were not able to
6 accommodate them during the regular visiting hours, and
7 I extended visiting on that day as I say unfortunately
8 because that's the day the man from the, that floor
9 departed the institution.

10 Q Have there been other occasions?

11 A Yes.

12 Q What is the rationale for not permitting visits
13 as a general rule on the residential units in the commons
14 areas?

15 A I think those of us who work at the MCC have
16 several problems with allowing visits with the unit.
17 And I might just -- I mentioned some of them that we have
18 considered.

19 First of all there is no sure way of making
20 sure the contraband doesn't come into the institution if
21 you allow visitors to come into the multi-purpose area,
22 short of even using searches that involve removing the
23 clothing of people, which is not a guarantee that contra-
24 band is not going to be brought in.

25 In addition to that I think we have to be

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1924

2 concerned about supervision of the people once they're
3 in the unit. It's a bigger area to supervise. There
4 are 48 rooms and most of the multi-purpose areas or the
5 living units, and theoretically I guess the visitors could
6 wander into any one of those areas making it much more
7 difficult to supervise.

8 I think we have to be concerned about account-
9 ability, too, because then we have a large number of
10 people walking out of that unit and the possibility of
11 something recurring like what happened last April I think
12 is more greatly increased.

13 Finally, I think there is a factor that we
14 sometimes tend to overlook and that is the privacy of
15 other inmates, and that's their house. That's their
16 sliving quarters. That's where they take showers and
17 lounge around in -- especially on weekends and so forth --
18 in various stages of dress.

19 I don't think it's appropriate to, for a person
20 who may not be getting visits to force him to sit through
21 the visits of other people on a regular basis. He has a
22 right to privacy.

23 Q Are there factors connected with safety?

24 A I think that's, that a very important consider-
25 ation. And again we have some people in our institution

1 dws
2 who would represent I think a threat to the community or
3 citizens under different circumstances, some persons
4 who were mentally unbalanced. Some persons who are
5 violent and so forth.

6 I think if you brought visitors into the living
7 unit short of locking those people up who represented that
8 kind of threat would jeopardize the safety of visitors
9 coming into the unit.

10 Q Have there been occasions when it permitted
11 visiting right on the unit?

12 A Yes. I think it's happened about three times
13 since I've been there, maybe four, where we've declared an
14 open house for our minimum custody unit on the fifth
15 floor. An open house simply means that for four hours
16 on Saturday or Sunday the family and their children are
17 able to come into the institution, into the multi-purpose
18 area, and usually it's a pot luck dinner of some kind.
19 All the food is carefully screened or fluoroscoped and
20 the staffing patterns greatly enriched, and we have six
21 or seven staff members on during that kind of open house
22 and it's limited usually to those persons who are minimum
23 custody, red stripe persons who we normally don't consider
24 to be a security risk or have a tendency towards violence
25 and so forth.

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1926

2 Q What is the policy at MCC for special visits?

3 A Well, special visits can be authorized by
4 the unit management staff at any time the circumstances
5 seem to warrant that kind of consideration. I would give
6 an example of an out of town visitor who comes in and is
7 not on the visiting list but have called in advance and
8 asked that they be considered for a special visit. Or a
9 person who comes a long distance and wasunaware of the
10 visiting schedule and if they didn't get their visit
11 probably wouldn't get one at all or have to go back long
12 distances.

13 Under those circumstawnces the unit management
14 staff can approve special visits and I know personally on
15 a number of different occasions where those special visit
16 arrangements have been improved.

17 Q Mr. Taylor, what is the rationale for strip
18 search with visual general examination after a visit?

19 A Well, again coming back into the institution
20 living quarters from a visiting room probably represents
21 a great deal of vulnerability in the security system.
22 Although we think that contact visits are worth it you
23 do always run the risk of having drugs, small weapons and
24 other kind of material being brought into the unit
25 undetected unless you do a strip search.

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2 Now a strip search doesn't always detect those
3 kind of items either, but it certainly minimizes the kind
4 of items that might otherwise come in if a strip search
5 were not a matter of policy or routine and I know of, I
6 don't know of any other institution that we operate where
7 that isn't our policy.

8 Q What is a reason for the MCC policy limiting
9 an inmate's visiting list to six visitors?

10 A Again primarily it's for crow control. We
11 want to make sure that those inmates who, those people
12 who have legitimate interests in visiting with an inmate
13 have an opportunity to visit and we're concerned primarily
14 with family and close friends.

15 It was an arbitrary kind of thing in terms
16 of thinking that a man who was in would then have an
17 opportunity to visit with his wife -- one person -- his
18 parents -- three people -- and then possibly three close
19 friends. And we felt under those circumstances that

20 he would be able to visit with most of the people he,
21 wanted to visit and at the same time we would be able to
22 in some way reduce the number of people who are coming
23 through the, to the visiting rooms at the MCC.

24 Q Are inmates permitted to change their visiting
25 list?

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1928

A Yes, they do change them on a regular basis.

Q Which staff members are authorized to give out or to accept BP-9 forms?

A BP-9 administrative remedy forms are handed out by case workers, correctional counselors and unit management on the unit, the unit management team or staff.

Q What is the process of getting one of these?

A The Bureau of Prisons' policy on administrative remedy requires that we attempt to resolve an issue informally if possible. If a person has a grievance or complaint of any kind the theory is that they should come to their case worker, counselor, unit manager and discuss the matter with them and when they ask for the administrative remedy some questions should be asked about what the problems are, how they can be resolved. Is there some way we can resolve it here and now without going through a formal time consuming arrangement? And, if it can't be resolved the inmate then says "I know I want to file an administrative remedy." Then they're to be given a BP-9.

Q Are there inmate committees at MCC?

A Yes, there are.

Q Approximately when did they start?

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1930

that affect the general operation of the MCC.

Q What is the rooftop recreational schedule at MCC?

A Inmates are allowed to go to the roof daily and it averages out to about an eight hours, eight hours to eight hours and a half a week.

Q What is the rationale underlying the decision of scheduling roof time to the inmates?

A Well, again we schedule the roof time to make sure that the seventh floor doesn't go when the ninth floor goes and so forth so that we can maintain the separation of those persons who have to be separated for protection or because they're co-defendants or whatever.

Q Approximately how many jobs are available for inmates at MCC?

A There are several different kind of jobs. Each unit employs anywhere from 13 to 20 inmates on the unit working as sanitation workers, night-day, sanitation workers of the visiting room and sanitation workers, pantry workers and some clerical positions. Then they have one hundred and some other jobs throughout the institution that are part of the regular cadre assignment that we talked about earlier and are now being filled by

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1931

some pretrial detainees.

Q What inmates are assigned to the hundred-odd jobs outside of the units?

A Well, initially they were all filled by persons who were sentenced to serve short sentence, part of the cadre. Since the January Court order however, the majority of those jobs are filled by persons who are pre-trial status or at least half of the jobs are and maybe more.

Q Who fills the other jobs?

A Pretrial, pretrial people are working now in what used to be primary cadre assignments.

In addition we have in the last couple of weeks worked out the arrangement to bring people down from the writ unit to fill in, and the reason that was necessary is that because now that we're using pretrial people there is a more rapid turnover in those jobs and the quality of the work performed and the output obtained has dropped significantly. So that sanitation problems, work as in food service department and so forth are not the kind of skilled people who were there previously and they can't be depended on to be there tomorrow.

As a matter of fact especially in the food service area of a number of pretrial people quit daily

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1932

and they're not obligated to work. There is no way we can force them to work. If they don't want to work they don't have to work. It's completely voluntary.

As a result we've developed units in the dormitory, in the writ unit there are sentenced prisoners and they have to work. And when we have a shortage anywhere there will be a dormitory for food service o maybe two; a dormitory for mechanical services, and a dormitory for sanitation, and when we are short now anywhere where the cadre previously served in those capacities, people will be brought down from that writ unit under supervision to G.I. a particular area.

Sanitation for example might come into the third floor and clean up the whole area, and G.I. it, or the food service department, or anywhere that they're needed. The same is true of mechanical services, et cetera.

Q What criteria are used in collecting inmates for the jobs outside the units?

A Well, again we have to look for inmates who especially in pretrial category now even though we have very limited information to go on, we try to get those people who represent the least kind of security problems, persons on lower bail and so forth.

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Then secondly we look for people who have certain kind of skills and the pretrial category we look for volunteers. In the sentenced cadre category we look for more permanence now with minor record records and the skills that we need for the lead jobs in the various sections that I've talked about.

Q What is the basis for assigning these individuals to a particular job?

A What is the question again? I'm sorry.

Q What is the basis for assigning assigning a particular individual to a specific job?

A Well, again we assign, we try to match skills if we can and we have take into consideration security requirements. There are some jobs in the institution that cannot be filled by pretrial detainees. There are jobs that involve movement outside the secure perimeter of the institution. An example of the kind of jobs I'm talking about would be persons who work in the front lobby on night and sanitation or people who clean up the outside of the building or persons who have to move between floors for one reason or another.

Those persons have to be filled by cadre workers.

Q What if any additional changes have you made

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the unit receive some sort of pay.

We have a budget of about \$19,000. It's called performance pay. The average pay is about \$12 per person per month. Some get much less and some more.

Q Are some people not paid?

A Some people are not paid at all, and that's a decision made by the detail officer, the person they work for.

Q What is the policy with respect to whether or not that person will be paid?

A It depends on how long he's been on the job and how well he does and whether or not he performs in a satisfactory manner.

I might point out, Mr. Corsi, we also have authorization for industries at the MCC which I think will be a first for a detention facility and it will be on the seventh and ninth floor making brooms and brushes. And people who work in those jobs will get paid on a piecework basis. That industry should be operational By July or August of this year.

Q With respect to the jobs that are on the unit what kind of activities are involved there?

A Kind of activities on the unit?

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1936

Q Yes, the unit jobs?

A Well, again, people are involved in sanitation.

Two different shifts, the late sanitation, early sanitation. Food service preparation in the pantries. Cleaning the visiting rooms and clerical jobs.

Q Do they participate in the performance paid program?

A Yes.

Q With respect to the industry that you just mentioned approximately how many individuals are anticipated would be employed in that?

A We anticipate that ultimately we'll employ about 35 people.

Q Where will these industries actually be located?

A They will be located in the balcony areas on the units at the seventh and the ninth floor.

Q Approximately how much of the balcony area would be partitioned off for the industries?

A About one-third of the classroom or balcony areas will be used for industries and then they will go directly through to the other side of the unit where another one-third of that classroom or balcony unit will be used for industries. And in fact we'll end up with a U-shape

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building that will be completely enclosed off with glass partitions both from the multi-purpose area and the classroom area.

In addition to that then the classroom area itself will be closed off at the stairway leading to the balcony so that both the classroom and the industries will be sealed off from the rest of the unit.

Q In addition to the performance pay that you talked about are there other types of reumeration for people working?

A Sentenced prisoners can earn good time for working. Unsentenced prisoners will ultimately be able to earn industrial pay.

Q It is stipulated trhat inmates other than the members of the designated cadre may not visit either the law library or the general library. What is the rationale for this policy?

A Again, that's true. When we first opened the facility we talked about what kind of libraries we ought to have and are libraries worked like bookmobiles.

In other words, you order a book and the Book is brought up to you. And the law library, the book is either brought the same day or the following day, and so you can order from a list of books that are available.

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2 In addition to that a great number of our
3 pretrial people who have attorneys and access to legal
4 counsel, and therefore the library may not be as
5 important to them as it is for a sentenced prisoner who
6 represents himself.

7 The reason we don't allow inmates to go to
8 the library at this point is because of the separation
9 problems, the scheduling problems, the transportation to
10 and from the library and I think we feel at this point
11 that the library provided works well and is adequate.

12 Q What is the MCC policy with respect to the
13 incoming legal mail?

14 A Income legal mail is never opened in the mail
15 room but rather is the policy to send it to the unit
16 where it's opened by a member of the unit staff in front
17 of the inmate. He's required to initial that envelope
18 and date it when it's opened.

19 Q With respect to handling of non-legal mail
20 what is the MCC policy?

21 A Well, we follow the, the policy and stipulations
22 provided in the January Court order.

23 Q How often is mail delivered to the floors?

24 A It's delivered once a day at four o'clock.

25 Q Is that on a weekend also?

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Taylor - direct

1940

Chief Correctional Supervisors about the use of administrative detention.

Our policy statement, local policy statement on administrative detention in no less than three places defines under what circumstances a person should be placed in administrative detention, and I've also met with the Correctional supervisors during the regularly monthly staff meetings and asked them to please monitor and follow the Bureau of Prisons' national policy on the use of administrative detention.

Q Have there been occasions when the whole institution has been locked in at a time other than at counts or at the night time lock-in?

A Yes, there has. I remember in --

Q How many times has that occurred to the best of your recollection?

A Approximately I can only recall two occasions and there may have been more but I just don't recall.

(Continued on next page.)

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1943

of the guidelines for inmates at MCC. What is the policy of the MCC with respect to distribution of those guidelines?

A Those booklets were very attractive booklets, I think were printed up by the Government Printing Office for us. They are both in Spanish and English, and one copy is handed out to each person coming through our receiving and discharge.

Q What steps, if any, has the institution taken to make available for Spanish-speaking inmates notices and other policy statements in their own language?

A Some of the policy statements that more directly deal with activities that affect inmate population are also written in Spanish. Several months ago we hired an interpreter whose sole job on a contract was to come in and convert those English policy statements to Spanish. She's completed about three that have been published and about six more that need to be printed.

As far as notices on the bulletin board are concerned, we have not printed a great number of memos in Spanish. And the rationale, although I think we could do a better job in that regard, the rationale for not having done more of it is that there is always

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Taylor-direct

1944

Spanish-speaking staff around or Spanish bilingual inmates who can interpret those short notices to inmates who can't speak English.

It's a greater problem for people who may speak French or some other kind of language where we have no other inmates to interpret for us or where we have no staff that speaks that particular language, but it's a problem of trying to be all things for all people, and there are some places where you just can't do it, can't meet the needs.

MR. YOUNG: Your Honor, I'm going to object to the description of the translations. First of all, we have never received any of those documents.

Secondly, we have never seen any of them. We have asked for all documents that are posted on the bulletin boards. So if they have those documents to produce I suggest that they produce them. But we received no information on any of them.

MR. CORSI: Your Honor, I think the warden's testimony was that not a great deal of them have been translated, and that they are trying to take steps to translate more.

THE COURT: Mr. Young says so far as he's been apprised, there are none.

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Taylor-direct

1946

1 dwa
2 their legal status for the most part. We have a unit
3 for persons who are on writ. Other units for people
4 who are pretrial status and other units for people who
5 are sentenced prisoners. We have one unit for maximum
6 supervision, close supervision, and one unit for women .
7 and one smaller unit for persons who are protective-
8 custody status because they are part of the witness-pro-
9 tection program of the Department of Justice, testifying
10 for the government.

11 Q Since the January order of the court, have
12 any units changed their designation as to what type of
13 individual would be housed there?

14 A The 5th floor North, which was previously
15 designated for sentenced prisoners serving short sentences,
16 now is used for pretrial detainees.

17 Q What is the MCC policy with respect to
18 housing youthful offenders at MCC?

19 A We periodically are confronted with the
20 necessity of housing youthful offenders, and for the
21 most part, however, we move them on to the
22 youth center at Rikers Island as soon as we can.
23 When arrangements can't be made immediately, then they are
24 housed separately and locked in individual rooms on the
25 hospital wing of the second floor. After a period

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Taylor-direct

1 of observation some of them are allowed to come out and
2 then act as orderlies in that area. But I would
3 want to emphasize that we try to move young adults
4 or youthful offenders out of the MCC as rapidly as pos-
5 sible.
6

7 Q What is the MCC policy concerning room
8 searches?

9 A Well, each -- each employee, correctional
10 officer, unit manager, counselor, all employees are re-
11 quired to do periodic searches and to monitor for
12 contraband and for any other kind of security breach
13 that could jeopardize the safety of the institution and
14 the staff and inmates.

15 We, each correctional officer on the unit,
16 must search a certain number of rooms a week. That's
17 part of his responsibility. I don't think they
18 necessarily mind if the inmate is there, but he doesn't
19 have to be there when the room is searched.

20 Q With respect to these searches are inmates
21 permitted to watch them?

22 A Under those circumstances where an individual
23 search of the room is being done an inmate can stand
24 and watch as long as he stays outside of the room.
25 Under a more structured search of rooms, and we do have

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Taylor-direct

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2 a unit that goes through certain segments of the in-
3 stitution on a weekly basis, they cordon off the area,
4 and go through all the rooms. Under those circum-
5 stances no inmates are allowed inside that cordoned-off
6 area and the reason for that is to prevent inmates
7 from distracting officers who are doing the searching
8 and moving contraband from one area to another ahead
9 of the search party.

10 Q Are there other reasons for cordoning off
11 the area?

12 A The other consideration is that during
13 searches there sometimes arises a situation in which
14 the inmates become argumentative and conflicts do de-
15 velop between staff and inmates over the search. I
16 might point out though that staff are instructed to
17 leave the room as they found it and they are provided
18 with training during their on-the-job training during
19 their initial assignment with the Bureau of Prisons
20 and their probationary year, ongoing reminders about
21 the way rooms ought to be searched, through our regional
22 training centers.

23 I think it is important to preserve as
24 much as possible the privacy and respect the privacy
25 of the inmate.

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Taylor-direct

Q It has been stipulated that inmates are not permitted to receive food packages except on special occasions, particularly the holiday season. What is the rationale for this policy?

A Well, inmates are not allowed to receive food packages again, because of the possibility of concealing contraband, drugs and even weapons. Food items that come into the institution, especially if they come directly from the family.

The other problem associated with allowing food into the institution has to do with the amount of staff time necessary to inspect it, No. 1; and, No. 2, sanitation, storage problems, the result of having a large amount of food around.

Q Are the problems concerned with theft or fights?

A That's another consideration, that there is a person who may not have a family or friends to bring food in and other individuals do, and I might add that that's a consideration of personal property in all kinds of things that are available to inmates that we try to narrow the gap between the haves and the have nots to avoid conflicts, the possibility of using personal property and food items and so forth for buying favors

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Taylor-direct

and gambling and strong-arming and other kinds of activities that have been written about in books for years and have always caused correctional administrators problems.

MR. YOUNG: Your Honor, we're trying to avoid objecting as much as possible, and give respondents wide latitude, but questions like the ones that Mr. Corsi just asked are very leading. I just request that --

THE COURT: I didn't think it was very leading at all.

MR. YOUNG: He asked about fights and then the answer came back, yes, there are fights.

Q With respect to the limits on personal property what is the rationale for that property?

A Mr. Corsi, some of the same rationale applies again, it widens the gap between the very influential kind of people and we have a number of people who are very influential in our custody and they would be able to buy nice-looking clothes and nice-looking personal items and so forth and the people who do not have those items would not be able to purchase those, and again creates conflicts and problems and fights and theft, and also again creates storage problems and so

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Taylor-direct

1951

2 forth.

3 As far as clothes are concerned I think
4 especially in an institution such as we operate, where
5 there is such a rapid turnover, if we allow inmates to
6 wear their own personal clothes, identifying them as
7 inmates would become extremely more difficult and
8 it is just one other area of prevention in terms of
9 preventing an escape that would be taken away from us.
10 By that I mean that a uniform readily sets him apart,
11 sets him aside. If he is going to escape he had
12 to get rid of that uniform and somebody has to bring
13 him in some civilian clothes, which makes it just
14 that much more difficult to escape. So the personal
15 clothes, in addition to being storaged and theft and
16 contraband problems, and also the escape problem, are a
17 security problem.

18 Q What is the rationale behind the \$50
19 limitation per month for inmate spending at the MCC
20 commissary?

21 A The same rationale again is used that
22 there are some inmates who have a great deal of money
23 and others who don't. And if you are allowed to
24 spend any amount of money in commissary, you could
25 then purchase commissary items that could be traded

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Taylor-direct

1
2 for favors, for homosexual favors, for other kinds
3 of considerations, from persons who don't have those
4 kinds of items available to them, and it would also
5 create a storage problem for commissary operation.
6 If we couldn't determine how much people were going to
7 spend every month in commissary, if there were people
8 spend a great deal more than others, it is a storage
9 problem on the units.

10 Q Is the \$50 limitation one that is unique
11 to MCC?

12 A No, we --

13 Q In the federal system.

14 A We do not have local discretionary authority
15 on the amount of money the inmate can spend while he's
16 confined at our facility or any other facility operated
17 by the federal system.

18 Q Where is the decision made as to spending
19 money?

20 A That decision is made by our national
21 office in Washington. They set the policy and we are
22 obligated and mandated to follow it.

23 Q The system, the commissary system, at MCC
24 has been stipulated to, that is, they are not -- the
25 inmates are not permitted to go to the basement, but

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Taylor-direct

in fact commissary is sent to them. What is the rationale behind this policy?

A Mr.Corsi, this is a further maturation of the concept of separation. In other words, each unit is a self-contained, independent-functioning unit that can operate like a small jail, for separation of the population for legal status and so forth, all the items I have mentioned.

Commissary then is -- all services are blocked to the unit as opposed to units coming to the commissary. In addition, we feel that it works well, because the kinds of things people buy in commissary are not the kinds of things they are unfamiliar with. In other words, if you buy a certain kind of deodorant you see it before you know what it is, you know what you are getting. If you see a list of six kinds of deodorant, in most parts you know what those products are.

The only exception to that might be a watch or radio or some other item that you come in new, you may not be familiar with, but in most cases certainly your roommate next door has one and you can look at that one before you make your decision.

So it isn't the kind of things where you

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have to come down and browse and look for the best deal. They are all the same, and you can -- you can pick from a list as well as you can from a counter.

Q In what manner may inmates receive funds for their commissary accounts?

A They can receive funds now through the mail, they can send cash if they want, although that's not advisable, or they can send checks, which there is a 30-day clearance on. Or they can send postal money orders, U. S. postal money orders, which are processed immediately, or Western Union moneygrams, which are processed immediately.

All other kinds of negotiable items have to be suspended for 30 days. And, again, that's a policy established by the Washington office, not one that we have local discretionary authority on. In addition to that, now the families of inmates can leave money directly in our commissary office in the front lobby of the institution two hours a day, five days a week.

Q What problems, if any, has the institution experienced with funds being sent through the mails?

A Well,, we have had some problems, and I think we have talked about it from time to time, and even written

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Taylor-direct

1 dwalb
2 some memos advising inmates on how to best handle the
3 stuff coming in. First of all, we advised against
4 sending money because if it's stolen by a corrupt staff
5 member or anyone else anywhere along the line there is
6 no accountability for it. We suggest they use postal
7 money orders and Western Union moneygrams so that they
8 can be processed immediately.

9 The other thing is that we have had delays
10 from the Manhattan post office. We sent some test
11 letters to our Community Treatment Center on 55th
12 Street and have been surprised to find out it takes
13 anywhere from three to ten days for it to get there.
14 We have also had problems with mail coming from the re-
15 gional office with the same regard.

16 So from the time the money is sent from home
17 until the time it gets to the institution it would cause
18 some concern on the part of the inmates and to us.

19 The other problem in sending it through
20 the mail is that John asked his wife Mary to send in
21 \$10 and she says, "I sent 10 already," when in fact
22 she hasn't sent it. She just didn't want to tell him
23 and cause problems. She will then go out and pick
24 it up and send it.

25 MR. YOUNG: I object to that unless you

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Taylor-direct

would have a specific example from personal experience.

THE WITNESS: I do know of a specific example where that has happened.

Q Continue, Mr. Taylor, laying aside that example. What other problems?

A The other kind of problems that we have had, some postal money orders now that are coming back have been certified, have our receipt on it, but have never been credited to the inmate's account, and so there is something wrong there, an investigation is being done. In the meantime all those accounts where that has happened will be made up. In other words, they will find, if they will sign the necessary forms the money will be placed in their account, and we will find out what happened to their money.

Q In addition to the cleaning crews that you discussed a little earlier in your testimony, are there other procedures for maintaining sanitation at MCC?

A We have a full-time safety and sanitation officer who is required to do an inspection of the entire facility each week. He has to go around the facility each week and in reality goes around daily.

We also have a sanitation branch and a safety

1 dwal7 Taylor-direct

2 and sanitation branch in our central office in
3 Washington who monitors the local programs, and periodi-
4 cally --

5 Q Who is the sanitation officer at MCC?

6 A Mr. Gule, G-u-l-e.

7 Q Would you describe the system down in the
8 central office that you just mentioned?

9 A Central office also maintains a small staff
10 of experts who are familiar with sanitation, pest control
11 and so forth. They are required to do periodic audits of
12 our field institutions to insure that they are following
13 appropriate sanitation standards, pest control stand-
14 ards. They might use other experts from other
15 institutions, either in the same region or other
16 regions. Every institution has a safety and sanita-
17 tion officer.

18 Q Has the MCC had an audit from the central
19 or regional office?

20 A Two. One in which -- shortly after we
21 opened -- in which they came in and made several recom-
22 mendations about things we ought to do to bring our
23 safety and sanitation program up to standard, and they
24 came back again last fall to make sure that we followed
25 the original recommendations and then made some addi-

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1 dwal8

Taylor-direct

2 tional recommendations on what we ought to do.

3 Q What barber services are available at MCC?

4 A We provided barbering equipment on each floor,
5 which consists of a cutter and scissors and comb and
6 so forth. We have recently purchased cabinets for
7 keeping those, that equipment. However, they are
8 not the kind of cabinets we thought we were getting and
9 some alterations have to be made.

10 Just last week, after meeting with the warden
11 from Petersburg, I learned they had a barber available
12 at that institution, a trained barber, who is an in-
13 mate. He has about six or seven months to serve on
14 his sentence, and he's since been transferred to this
15 facility to provide those kinds of services. He'll
16 be a member of that 21 corps cadre I talked about.
17 Incidentally, that will be his only job. That's all
18 he will be required to do.

19 Q Mr. Taylor, you touched briefly on the
20 question of uniforms earlier on. What is the rationale
21 for requiring the inmates to wear uniforms at MCC?

22 A Well, there are others besides the security
23 proplems that I have already mentioned and being able
24 to readily identify an inmate as an inmate while he's
25 wearing the uniform. There are some other economic

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factors that I think have to be considered.

The kind of uniform that we use especially is more flexible in terms of size. It is difficult to fit a person with a coverall or a jumpsuit, as they are referred to at the MCC, as it is to fit each individual person with shirts and pants and so forth. In addition, the jumpsuit can be used for both men and women and it's easy to maintain. They are easy to service.

Q With respect to food service operation at MCC, is there a mechanism for inspection or audit of that operation by the central office?

A I guess I should say that every department in the institution has a counterpart some place the Bureau of Prisons, in the central or regional office, and each one of those departments are subject to periodic, regular reviews or audits, if you prefer to call it that. In addition to that, some departments have counterparts in the Department of Justice and the Government Accounting Office, and they also do reviews of programs.

This is especially true in the business office, commissary operations, bookkeeping, etc. We have had audits in our institution since I've been

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Taylor-direct

there, and personnel, unit management, sanitation, business office, and religious programs, some others.

Q With respect to food service --

A Food services also.

Q -- has the MCC been audited?

A Yes. They came in last fall and did a thorough evaluation of our food service program and gave us a long list of things that ought to be accomplished, and they came back in again a couple of weeks ago and went over the -- or a week ago, I guess now -- and went over the items, and we settled this time on the kinds of equipment, and that we would have to purchase to comply with recommendations that they made, and have since been authorized by the central office the sum of \$39,500 to comply with the recommendations.

Q What kind of equipment have they recommended and have you been authorized?

A They recommended that we purchase 12 refrigerated food cars, which we are going to do, and possibly 12 more at a later date, and where the funds will come from for those 12 are still undecided. Two more microwave ovens, commercial toasters for all the units, garbage disposal, and some racks for

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Taylor-direct

retrieving dirty dishes from the units' cafeteria racks.

Q Have you experienced losses of food service items during the operation of MCC?

A That's a tremendous problem, and so much so that you begin to wonder why so much of it is going by way of the garbage vendor. But we have spent \$24,000 in the last year just on things like spoons and knives and forks and plates and glasses and so on. As a matter of fact, one of our warehouse officers was observing the garbage truck remove the trash from the sally port area and heard silverware jingling in one of the bags, and we checked it out and there were several hundred pieces of silverware, spoons and glasses in the bag that we were able to retrieve, and he -- he wrote a report on that, as a matter of fact.

Q Mr. Taylor, there is testimony in this case that several weeks ago a special detail was brought down to the kitchen area to help clean that area. Why was that crew brought down?

A Well, because I didn't think the kitchen looked clean enough to me, and because the sanitation drops below standards that I expect food service to have and a number of our other staff is expected to have, and certainly the central office requires, and to get it

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Taylor-direct

up to par I required that somebody come down and do the cleaning during the off hours, when we are not in the middle of preparing a meal and cooking and serving and so on and so forth.

I've not only done it a couple of weeks ago but I've done it a couple of times since we opened up the place and will probably continue to.

Q What is the menu cycle at MCC?

A The menu cycle is there is a 35-day-cycle menu prepared once a year, and that's sent in to Washington. And then from that 35-day cycle additional seven-day menus are prepared weekly, and then another menu, seven-day or 35-day cycle menu, is prepared for food as served. That's sent in usually on the first of the month.

Q When you say that's sent, to whom is that sent in?

A To Washington, D.C. And they review then what we said we were going to serve compared to what we actually served to determine whether or not we had fallen below the standard of nutritional value.

Q How often is that menu sent in?

A That menu is sent in every month. It's mandatory.

Q Mr. Taylor, how often do you go through the

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Taylor-direct

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2 institution?

3 A I go through the institution, certaion
4 parts of the institution, every day that I am in the
5 city. I don't go completely through the entire
6 facility, but I try to hit different segments of the
7 institution and some days I go through the whole
8 place.

9 Q Is there a policy with respect to other
10 executive staff members circulating through the in-
11 stitution?

12 A Yes, I require that the associate wardens
13 and the correctional -- chief correctional supervisor,
14 my executive assistant, spend a minimum of two hours
15 out of their everyday work walking around areas of the
16 institution and checking out on the programs and
17 services. That's a minimum. They can spend
18 eight hours, if they want to, as long as they get their
19 paper work done.

20 Q What type of system does the MCC have for
21 temperature control?

22 A The environmental system is a completely
23 automated system controlled by a JC-80 Johnson Con-
24 trol computer. It's completely automatic.

25 Q What is the temperature level that this

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Taylor-direct

1964

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2 system is set at?

3 A The master thermostats are set at -- there
4 are eight of those, as I understand. They are set
5 at 72 degrees temperature; variants, which we would
6 think would be acceptable, would be anywhere from 68
7 to 74 degrees.

8 Q Did there come a time that you experienced
9 problems or the institution experienced problems with
10 this system?

11 A Yes, and it came very fast. About 30 days
12 after we opened we realized that we had some serious
13 problems in controlling the environmental system in the
14 institution, and initially thought it was just that
15 we didn't know how to run it, and it became clear shortly
16 thereafter that there were some major malfunctions as
17 well.

18 To further complicate that -- when I say
19 malfunctions, I mean valves that were not turning on
20 when they were supposed to turn on, and other kinds of
21 heating elements that didn't work, or other kinds of
22 air flow problems.

23 Q When you discovered that problem how was
24 the system then operated?

25 A Well, in addition to that, we had another

dwa25 Taylor-direct

major problem that occurred, and that was that oil got into the pneumatic valve control lines which destroyed most of those valves. And so then we had a major catastrophe.

We worked with Johnson Control in trying to get them to resolve as many of the deficiencies as we could over the period of months. GSA negotiated with them and without too much success.

We finally contracted with another company to make the repairs, and at a cost of about \$37,000 the repairs have been made to the point that the system is now probably functioning at about 95 to 98 per cent efficiency.

The major fine tuning involves a couple of things: One, just making the adjustments that have to be made and, two, getting people to take the covers off their vents and so forth so that it won't throw the system out of balance.

Q Have you taken steps to have those covers taken off the vents?

A Yes, there have been a couple of memos written to the inmate population by me asking them to remove their covers so that we can make the final adjustments. And, No. 2, we have asked the unit management staff to

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Taylor-direct

1966

encourage all the people on the units to remove those covers so that the final adjustments can be made.

THE COURT: Mr. Corsi, I think we are going to stop for lunch. Plan to come back at 2:15.

(Luncheon recess.)

1 jgs
2 the policy comes from there and we don't have local
3 discretionary authority on what kind of diets we can
4 provide for people based on religious preferences and so
5 forth.

6 The policy for Muslims is that when and if
7 pork is served it has to be identified on the menus as a
8 pork item, and that when that pork is removed from the
9 plate it is our policy to fill that with the remaining
10 food that is being served for the day, with additional
11 vegetables or potatoes or whatever.

12 Q Warden Taylor, you indicated that religious
13 diets are governed by policy from the Bureau of Prisons.
14 Is that in written form?

15 A Yes.

16 Q I ask you to look at a document marked
17 Respondent's Exhibit K. Can you identify that
18 document?

19 A Yes. It is a policy statement on religious
20 beliefs and practices of committed offenders and it has a
21 section which talks about religious diets.

22 MR. CORSI: At this time, your Honor, we would
23 offer this in evidence as Respondent's Exhibit K.

24 MR. YOUNG: Your Honor, we assume that the
25 Bureau of Prisons policy statements, since they are public

1 jgs
2 Q Mr. Taylor, have you received any complaints
3 from female inmates concerning the presence of male staff
4 members on the 5 South unit?

5 A The first complaint that I received from an
6 individual occurred on March 14, and I received that
7 one from Miss Braunig.

8 Q Have you received any other complaint?

9 A Not that I can recall, although I've had
10 general complaints from the women on that unit about
11 tours going through unannounced.

12 Q Are female officers assigned to male housing
13 units?

14 A Yes.

15 Q And what is the basis for the assignment of
16 female correctional officers in male housing units and
17 male correctional officers to the female units?

18 A We have female correctional officers all over
19 the Bureau of Prisons, some of whom work in all male
20 institutions as well. And the theory is that female
21 correctional officers can do the same kind of work that
22 male officers do, and vice-versa.

23 As a matter of fact, there is some union concern
24 about whether or not women who are being paid the same
25 wage and expected to do the same job should be treated

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Taylor - direct

1974

any differently that men performing similar duties, and vice-versa.

Q I think we touched briefly before on the fact that at night there is one officer assigned to cover two units on a particular floor. When I say "at night," I mean after the 11 o'clock lock-in. What duties does that officer have to perform during those times?

A After the inmates are locked in for the evening, there are a few inmates that for a brief period of time were left out to do some cleaning, and usually they are left out one side at a time, and he supervises that activity.

He also crosses back and forth between the two units to check on windows and doors in individual rooms of people who are locked in for the evening, and he is required to go back and forth, spending his time equally between the two units.

Q What is a watch call?

A Watch call is a call that every officer is required to make every 30 minutes from 6 p.m. until 6 a.m. to assure the Control Center and the Correctional Supervisor on duty that the officer is there, that he hasn't become ill, hasn't been taken hostage, or hasn't had other kinds of problems which prevent him from performing his duties.

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Taylor-cross

questions.

CROSS EXAMINATION

BY MR. YOUNG:

1 Q Warden Taylor, on approximately what date
2 did you start this policy of allowing visitors to
3 drop off cash at the institution?

4 A That policy was started, the cash through
5 the visiting room was started, about two or three weeks
6 ago at the most.

7 Q Approximately what date did you start
8 unlocking the bathroom doors in the visiting room?

9 A The bathroom doors were scheduled to be
10 unlocked last Thursday, but because of problems
11 associated with getting the door to work in our dividers
12 in the front lobby, etc. they were locked and I believe
13 they were not unlocked until Friday night.

14 Q Approximately what date did you put the
15 Coke machines in the visiting rooms?

16 A Approximately four weeks ago, I think.

17 Q Approximately what date did you stop locking
18 the individuals in the dormitory unit into their dormitory
19 pods for meals?

20 A That policy was started a few months ago
21 and stopped about two weeks ago, two or three weeks ago.

1 dwa6 Taylor-cross

2 Q The policy of locking people in, you
3 mean?

4 A Yes.

5 Q So approximately two weeks ago you started
6 letting them out for meals?

7 A Yes.

8 Q When did you start using the second waiting
9 room in the hospital unit?

10 A Three weeks ago, approximately.

11 Q When did you start allowing new inmates to
12 bring coins in from the visiting room for use in the
13 telephones or newspapers?

14 A Three or four weeks ago.

15 Q When is the new proposed attorney visiting
16 area going to be in effect?

17 A He advised me, the contractor advised me,
18 that he would have it ready in two to three weeks.

19 Q When is this new file system at the re-
20 ception desk going to be in effect?

21 A The file system?

22 Q Yes. You described a new set of files.

23 A The file cabinets were ordered about three
24 months ago. They came in about five or six days ago
25 and they should be in effect by the end of the week. As

dwa7

Taylor-cross

soon as we can transfer the records.

Q When did you advise either the petitioners or the Court of this new proposed visiting schedule?

A We started talking about the visiting schedule --

Q No, just when did you advise petitioner and the Court?

A I advised Mr. Corsi before Christmas, some time in the fall of '76.

Q That you were intending to extend visiting hours?

A We were changing the visiting hours.

Q I'm talking about extending the visiting hours. I realize you were planning on --

A We have not, so far as I know, advised --

Q So today was the first day that you announced that, is that correct?

A Yes.

Q When did you put the sally port in the basement?

A It was put in the basement about the 1st of February or so. It's not completed yet.

Q Warden Taylor, do you recall when the pro se petition was filed in this case?

1 dwa Taylor-cross 1995
2 tion for the dormitory unit on that page refreshes
3 your recollection as to whether that unit was ever
4 designed to house Immigration and Naturalization Service
5 vice detainees?

6 A Yes, it is, it is typed in "Immigration
7 and Naturalization Functional Unit."

8 Q Isn't it true, Warden Taylor, that the
9 dormitory was designed to be used by INS because
10 it was expected that such people would spend only
11 a few days in the dorm?

12 A I really can't answer that question. I
13 don't have any independent recollection of that.

14 Q Warden Taylor, when the Metropolitan Correc-
15 tional Center was first opened was the dormitory designed
16 to house INTA inmates, inmates who were just
17 arriving at MCC?

18 A Well, the question "designed," that's
19 what it was used for in the beginning. We used
20 it for new arrivals at the MCC.

21 Q Why was it used for that purpose?

22 A Because we felt that there would be a rapid
23 enough turnover. We could move people then, it was
24 the highest floor, No. 1, and we don't know too much
25 about new arrivals coming in. We felt it might be

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Taylor-cross

1999

items without someone else intruding on them, and by that I mean primarily other inmates.

Q Do inmates at the MCC who live in private residential rooms currently have keys to their rooms?

A Not all of them. I can't tell you how many might have. We have lost most of those keys in the year and a half.

Q Warden Taylor, do you believe that privacy is important to an inmate?

A Absolutely.

Q Warden Taylor, when you were involved in the planning stages of the Metropolitan Correctional Center, was 5 South, the unit that is currently being used as the women's unit, designed as a halfway house for persons who would be on work release or other activities that would take them outside of the jail during the day?

A That's correct.

Q Is that why the toilet facilities were not put in the individual rooms in that unit?

A Yes, although I don't understand necessarily the rationale for that, but that's why they were not.

Q Warden Taylor, at any stage in the planning of the Metropolitan Correctional Center were two of

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Taylor-cross

2002

1 say. I won't allow that.

2 Q Are you aware of an inmate named Elizabeth
3 Barnes?

4 A Yes.

5 Q Are you aware of whether she is presently
6 undergoing detoxification treatment?

7 A I don't know.

8 Q Warden Taylor, at any stage in the planning
9 of the Metropolitan Correctional Center was a portion
10 of the hospital floor which is now being used to house
11 medical patients -- was that section designed to
12 house persons whose psychiatric condition required
13 that they be housed separately from the rest of the
14 prison population?

15 A Yes. But the unit was -- we never in-
16 tended to use that unit for psychiatric patients be-
17 cause it was poorly designed for that purpose.

18 Q At some point in the planning it was designed
19 for that purpose, is that correct?

20 A Yes, there was a space designated for in
21 the initial planning phase of the facility for psychiatric
22 patients, but one look at the facility and we were
23 convinced that we would never use it for that purpose.

24 Q When it was designed for that purpose was
25

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Taylor-cross

2006

A You are talking about the secure elevators in the back side and the landing that goes either to the north or the south?

Q Yes.

Well, you just referred to the elevators as secure elevators?

A Right

Q Why do you call them that?

A Because they go to secure elevators of the institution. They are used to transport marshals and inmates and so forth, and the other side we refer to as visitor elevators because they transport visitors to the visiting rooms.

Q Do the secure elevators that you just described open on any non secure areas in the institution?

A They all open onto a common landing.

Q Which landing is that?

A Well, each floor has a landing, 5, 7, 9.

Q Obviously those landings are secure parts of the institution that are adjacent to the residential units. Do they open on to any nonsecure areas in the institution?

A Yes, they open up into the hospital area,

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Taylor-cross

2007

1 into the first-floor lobby area, into the third-floor
2 booking area, if that's what you mean. I'm not quite
3 sure what you are getting at.
4

5 Q Inmates go to the hospital area, don't
6 they? I mean they are taken to the hospital area?

7 A Yes.

8 Q And inmates are taken in and out of the
9 institution occasionally from the first-floor exit
10 of the secure elevators?

11 A Yes.

12 Q Did you state to myself and several other
13 persons during a tour of the control room in January
14 of 1976 that it would take the cooperation of three
15 staff members for an inmate to escape from MCC through
16 any conventional exit?

17 A No, I don't think so. I was talking
18 about the visiting room, because there, as I explained
19 I think this morning, that it would take probably three
20 staff members, working in conjunction with one another,
21 to help an inmate because of the backup systems we have
22 in the visiting room now.

23 Q That is, to get out from the visiting area?

24 A Yes.

25 Q Which is a less secure area in the institu-

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Taylor-cross

2008

tion?

A Right.

Q By the way, you talked this morning in your direct testimony about the problems of allowing movement in MCC because people from the protective custody unit would be using the elevator to go in and out of the building, or go over to the courthouse. Isn't it true that the protective custody unit is on the third floor?

A Yes.

Q And isn't it true that there is a bridgeway between the third floor and the courthouse?

A Well, that's true, but the protective custody inmates also go to Eastern District of New York and New Jersey and they use the sally port.

Q Isn't it true that there is also a stairway going from the door adjacent to the protective custody unit down to the first-floor lobby for those inmates?

A There is a stairway but it is under key control.

Q No, that's all I want to know.

You testified this morning concerning certain open houses in the units of MCC. Which units

Taylor - cross

gs7

in their rooms for the hours in question, from 11 until 6.30, unless they are using the bathroom.

Q Are any more guards stationed in the women's unit than in the other units during that period when the rest of the units are locked in?

A No.

Q Warden Taylor, has any female inmate ever complained to you, or to the best of your knowledge to any member of your staff, concerning allegations of sexual relations between male officers and female inmates?

MR. CORSI: Objection, your Honor. It is outside the scope.

MR. YOUNG: No. It is directly within the scope of your direct examination. You asked if Miss Braunig was the only person who had ever complained about male officers guarding female inmates.

MR. SCHAFFER: Your Honor will recall this subject came up at a conference concerning the discovery motion of petitioners, and at that time your Honor ruled that in connection with this subject, where investigations had been conducted and they were just rumors that were then unsubstantiated, that the details concerning that were privileged matter --

1 MR. YOUNG: I am not asking for the details.

2 MR. SCHAFER: -- and not subject to discovery.

3 MR. YOUNG: The only thing I want to
4 establish --

5 THE COURT: Wait a second. You've argued
6 enough. You win. On that I will permit the Warden
7 to answer.

8 Q Have any female inmates complained concerning
9 that?

10 A I've never had any direct complaints to me
11 by female inmates that they have been abused or physically
12 abused in any way by any member of the staff. There
13 were some some rumors in that regard which were investi-
14 gated.

15 Q Were those rumors caused by female inmates?
16 Were they the ones that articulated them? Who caused
17 the rumors?

18 A In part. And they were also related to
19 some other investigation that we were doing at the time.

20 Q So then your testimony this morning on direct
21 that you received no complaints concerning male officers
22 in the female units except for Miss Braunig's was not
23 accurate, is that correct?

24 A No, it was accurate. As I indicated --
25

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Taylor - cross

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2 THE COURT: That's not a good auestion
3 anyhow. I'm supposed to judge whether his testimony
4 is accurate. Don't ask him whether his testimony is
5 accurate.

6 Q Warden Taylor, you testified already that there
7 are both pretrial and convicted people in both of the
8 units on the fifth floor. How about the units on the
9 seventh floor?

10 A The seventh floor is primarily designated for
11 pretrial. However, any unit in the institution may
12 periodically and for a short period of time have a mix
13 of other offenders.

14 My position, being right or wrong I guess, is
15 that if there is an empty room in a pretrial unit and
16 there is a sentenced prisoner sleeping on the balcony,
17 at least for that brief period of time I will give him
18 the empty room.

19 Q Warden Taylor, you testified this morning
20 concerning a new attorney visiting area that is being
21 built on the third floor. Is there going to be any
22 correctional officer stationed there during the scheduled
23 attorney visiting hours to assure expeditious exit and
24 entrance of attorneys and inmates?

25 A We have 24-hour officer coverage about 35 feet

gs10

Taylor - cross

away from that entrance to that door. They are referred to in our jargon as booking officers and control room officers and receiving discharge officers.

Q Are those people such as Mr. Herbert?

A Mr. Herbert is one.

Q Do they have visual observation of the attorney visiting area, the proposed attorney visiting area?

A You are familiar with the third floor. You know that there is a control center there. There is a TV monitor which will monitor the attorney conference going on in that particular area. We use a wide angle closed circuit TV camera with a wide angle lens to monitor the activity in that room, and we'll rely also on the amount of traffic of other staff going past that area to monitor business in that area.

Q Isn't it true that the people you are referring to in the R & D Section have other responsibilities, such as processing incoming new arrestees or people returning from court or people going to court or people leaving or going to the protective custody unit?

A All of our staff have additional responsibilities, and that is true of people there as well.

Q Will the attorneys have physical access to the R & D Section?

jgs

Taylor - cross

1 hall or meet each other in the elevator or --

2 Q Are there occasions when they meet for
3 scheduled activities?

4 A Yes.

5 Q Inmates of different sexes?

6 A Yes, on the same floor.

7 Q But different units, is that correct?

8 A North and South, on the same floor.

9 Q Warden Taylor, have you ever, since this lawsuit
10 was initiated, advised any inmate that you could not
11 enlarge the scheduled visiting hours because of the
12 preliminary injunction issued by this Court in this case
13 on visiting?

14 A No. I've never said we could not enlarge.
15 I said we could not change until we cleared it with the
16 U. S. Attorney's office and your office.

17 Q Have you ever told any inmate that any
18 condition at MCC is the fault of this lawsuit or because
19 of this lawsuit?

20 A No.

21 Q Warden Taylor, do you or any of your employees
22 monitor calls going out through the coin operated pay
23 phones at MCC?

24 A No, we do not.

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Taylor - cross

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Q Do you have the mechanical capability to do so?

A No, we do not.

Q Do you reserve the right to do so at any time?

A Yes, we do.

Q And do you reserve the right to do so without notification of the person placing the calls or receiving them?

A They would be notified.

Q How would they be notified?

A In a policy statement on telephone usage. If we had the capability of monitoring phones, the inmates would be notified that we had that capability and would periodically use it if we intended to use it.

Q Do you monitor long distance phone calls?

A No, we don't.

Q Do you have the mechanical capability to do that?

A Yes, we do.

Q And do you reserve the right to do so at any time?

A Yes.

Q Would that require similar notification to the one that you described a minute ago?

A Yes.

1 jgs

2 Q Do you monitor, you or any member of your
3 staff, calls between inmates when they are permitted
4 to speak to each other on institutional phones?

5 A No, we don't.

6 Q This is a policy, or you are sure that this
7 has ever happened on any occasion?

8 A It is not our policy to monitor conversations
9 between inmates talking from one floor to the other.
10 Whether it has ever happened or not, I can't testify to
11 that fact.

12 Q All right. Did the commissary at one time
13 suspend selling nickels for a period of time?

14 A Yes.

15 Q For what period of time?

16 A I don't recall.

17 Q Do you recall approximately the duration?

18 A No, I don't. I remember --

19 Do you recall the reason?

20 A There were several. We've been in conversa-
21 with the phone company about nickels and dimes and whether
22 we ought to use nickels and dimes, and all those interest-
23 ing kinds of things. The phone company was concerned
24 about us using nickels because they have to empty the
25 coin boxes too often and they prefer that we use dimes.

jgs

Taylor - cross

1 The inmates, on the other hand, would rather
2
3 be able to use dimes and nickels because, if they go over
4 their three minutes, and they have to put another dime
5 in, they get cheated. So that's the kind of cross we
6 are in.

7 Q So at one point you stopped selling nickels,
8 thereby requiring an inmate to place a dime in a telephone
9 for his second three-minute call even though that would
10 only normally require a nickel, is that correct?

11 A That is correct. We did that at the
12 request of the Telephone Company.

13 Q Did you suggest to the Telephone Company
14 that they might come around more often to empty the
15 telephone boxes?

16 A Mr. Young, we've suggested a lot of things
17 to the Telephone Company, including that they might come
18 around more often. Their position is that they don't
19 want --

20 Q I think that question just requires a yes or
21 no answer.

22 A Okay. Yes, we have suggested it.

23 Q All right.

24 Warden Taylor, is the MCC long distance tele-
25 phone operator ever used for any duties other than

jgs

Taylor - cross

2053

THE COURT: Okay.

A We follow the policy that has been dictated by the Court order and we do have the contraband, when it is picked up, receipted and turned over to the correctional supervisor for disposition according to that policy and under his direction.

Q According to the policy I just described?

A The policy that you described. Ther is a holding period in which there are some alternatives made available for disposition of that contraband. In some cases it can be sent home, in some casesd it is held for a period to find out who the owner is, and in other cases it is destroyed. In other cases it is turned over to law enforcement officials for investigation.

Q What information do you receive as to whether or not this policy is followed, or is there a process, in other words a documentary process, by which you are notified of what is seized and how it is disposed of?

A Yes. We keep a log and a file in our chief correctional supervisor's office on material that has been picked up since that policy went into effect.

Q I assume when searches are conducted you are not always present; is that correct?

bsa2

facility?

A Yes, the system was under examination and various stages of repair for an entire first year of operation.

Q Does the facility operate properly now?

A It is about 95 to 98 per cent effective.

Q Have you ever had occasion to visit the visiting rooms in the Metropolitan Correctional Center?

A Yes, I have.

Q Recently?

A Yes.

Q When is the most recent time?

A Last week.

Q Was the temperature in those visiting rooms at an acceptable level or at the level that you have determined they should be at?

A I might point out that during those visits, depending on what the weather was like outside,, they were either unacceptable or acceptable. When the sun is shining brightly and it is about 60 or 70 degrees outside during the year, before the chill water is turned down, the visiting rooms get very uncomfortable when there is a very large crowd. At other times, when it is cold outside and the steam has not yet responded,

bsa3

Taylor-cross

they sometimes get cool. During the summer months last summer, in the beginning of the summer, they were very, very warm. Towards the end of the summer, after some adjustments were made, they again were quite acceptable. But in this system adjustments have to be made all the time to maintain a satisfactory environment.

Q Here, again, Warden Taylor, I just asked you about your last visit, so please confine yourself, because your own attorney can bring out any more flesh that wants to bring out to fill out any answer on recirect.

Warden Taylor, is it the policy at MCC that when an inmate applies for a furlough to go to a job interview MCC staff calls the prospective employer to confirm that that inmate has the interview?

A We may or may not. It depends on who the employer is or where he's located and so forth. We may ask the probation office for input first. If they are aware of the developments and the prospective employer, they may do the job for us.

Q On the occasions when your staff members do it themselves, do they identify themselves?

A They may or they may not. I have -- we

bsa4

Taylor-cross

have no policy against them not identifying themselves.

Q So they would be permitted to identify themselves as prison officials at that time.

Q Warden Taylor, are inmates at MCC ever required to work more than five days a week?

A Some inmates work more than five days a week but generally they work less than eight hours a day.

Q Are they required to work more than five days a week, are they required to as opposed to doing it voluntarily?

A Some inmates are required to work more than five days a week.

Q Can they be disciplined if they refuse to do so?

A Sentenced inmates, yes.

Q Are you aware of any instances where they have been disciplined for refusing to do so?

A Yes.

Q Do you believe that it is important to provide jobs for everyone who wants to work, including pretrial inmates?

A I think it is important to try to provide constructive activity in the form of jobs or some other activity for anyone who is confined.

bsa5

Taylor-cross

Q Why do you feel that that is important?

A Because I think it is good for people to stay active, to keep their minds active.

Q Is everyone at MCC that wants to have a job provided with one?

A No.

Q Were they at one time?

A No.

Q Do you remember testifying in the detainees' case which we referred to yesterday and being asked the following question and giving the following answer:

"Q Do you have sufficient number of jobs to allow all those who want to work to do so, all those detainees?

"A Yes, sir, some are very meaningful jobs, but we have work for everybody if they want to do it."

Answer by Warden Taylor. Did you give that answer?

A I think it was a misunderstanding of what particular group of inmates we were talking about. I gave that answer.

Q What inmates were you talking about?

A I was under the assumption that you were talking about sentenced prisoners, I believe.

bsa6

Taylor-cross

Q Is the term "detainee" normally applied to sentenced prisoners?

A Yes, it is terminology, an exchange of communication. There is no way that we can provide 500 jobs for inmates in the confines of a small institution such as we operate.

Q Warden Taylor, were 20 sentenced federal prisoners transferred to Nassau County Jail on February 1 or 3, 1977?

A Yes, they were..

Q To the best of your knowledge, did you or any other member of your staff tell those inmates that they were transferred because of this lawsuit?

A We advised the inmates that it was necessary to move them to another facility because we had to reduce our population.

Q Were other inmates present when that advice was given, other inmates in the institution?

A I don't know.

Q Do you know what the longest remaining sentence was of any of those inmates?

A Those sentences ran anywhere from 90 days to -- I think the average sentence was about 45 days.

Q The average sentence was 45. Do you know

1 relevant in your Honor's consideration of just what
2 sort of an order would be appropriate and what the
3 warden should be allowed to do on his own or what he
4 should be directed to do.

5
6 THE COURT: I will allow it without
7 being sure whether it takes us very far. I assume you
8 are not going to be spending a lot more time on it.

9 MR. YOUNG: That was the last question
10 I wanted to ask, your Honor.

11 THE COURT: Were you advised, Warden Taylor,
12 of the 60-day stay of that order?

13 THE WITNESS: Yes, your Honor.

14 MR. YOUNG: Fine.

15 BY MR. YOUNG:

16 Q Warden Taylor, do you believe that it is
17 important to have a well-equipped commissary?

18 A Yes. A good commissary stock, good ma-
19 chinery, what?

20 Q Well, in all aspects, good operations, good
21 availability, good stock.

22 A Yes.

23 Q Why do you believe that that is important?

24 A Because it makes us more efficient

25 Q More efficient?

1 bsall Taylor-cross

2 A Yes.

3 Q Does it have any benefits to the inmate?

4 A Yes. When we are talking about our commissary stock, of course it has more benefits to the inmates, it gives them a wider selection.

7 Q Why is that important to an inmate?

8 A I think it is important to an inmate because we all have differences of opinion about products and they are no different from us and therefore it is good to provide them with the widest selection possible.

12 Q Warden Taylor, do you hold the opinion that it is important to have a well-equipped commissary and an effectively-operating commissary because it is important to provide for the needs of an inmate and it is important to enable an inmate to purchase things in a commissary so as to give him a feeling of control over his life so that he can make selections which will give him some freedom of choice?

20 A It sounds a little poetic today, too, but that is my opinion.

22 Q Warden Taylor, I believe you testified yesterday as to room searches at the Metropolitan Correctional Center?

25 A Yes.

1 bsal4

Taylor-cross

2 A I think it is important provide inmates
3 with as much freedom within the confines of an
4 institution that you can without jeopardizing the
5 security of your operation or the safety of staff or
6 other inmates.

7 Q Do you believe it is important to allow in-
8 mates to structure their own day as much as possible?

9 A Yes, I do.

10 Q Warden Taylor, isn't it true that breakfast
11 foods at MCC such as eggs and pancakes are prepared 11
12 hours before they are served?

13 A They may on some occasions be prepared that
14 far in advance.

15 Q Are they normally prepared that far in
16 advance?

17 A That's our policy, to prepare it the night
18 before, so that it is ready the next morning. However,
19 it is not always done that way.

20 Q Isn't it true that other foods are fre-
21 quently prepared as far as 18 to 20 hours in advance
22 of their service to the inmates?

23 A There are some food items that are prepared
24 well in advance and there are other items that are
25 prepared just prior to the meal.

bsal6

Taylor-cross

A It is our policy to use administrative detention under those circumstances where the offender's behavior represents a threat to the safe, orderly operation of the institution, his safety, the safety and well being of other inmates or staff.

Q By the way, that is distinguished from punitive segregation, isn't it?

A That is correct.

Q What is punitive segregation?

A Segregation is used for the same purpose, and for a longer period for persons who require a longer period of supervision.

Administrative detention is designed for short periods.

Q And it occurs before the hearing, is that correct?

A That is correct.

Q Would you tell me whether, for example, possession of unauthorized clothing would be considered an offense which would justify administrative detention prior to a hearing?

A It might under some circumstances. If it were thought that that person were -- possessed that clothing for the purpose of disguising himself and perhaps

bsa

Taylor-cross

2072

in an escape attempt.

Q Warden Taylor, could you tell me whether there is any act that would -- any violation of the rules that would not justify administrative detention or that might be used to justify administrative detention?

A I suppose I could name some, but I think it is more for me to emphasize that usually the act in itself has to be considered with surrounding kinds of events and what the person was doing at the time, what he intended to do and so on.

If, for example, a man was given a misconduct report for possession of a small amount of change, I don't think that that would justify placing somebody in administrative detention, unless he were going to use that change in some way to do something else, and I can't imagine any circumstances under which that kind of --

Q All right. Could I ask whether there is a certain list of offenses which -- in which MCC staff aren't permitted to place people in administrative detention?

A There is a list of offenses that inmates can be charged with, and they are all coded as part of

bsa

Taylor-cross

the misconduct -- the policy statement on discipline, but it does not specify which charges would justify placing people in administrative detention.

Q So essentially, an MCC staff member could place an individual in administrative detention for any offense whatsoever if he decided it was appropriate?

A Again, I think it calls for individual judgment and how that particular offense may be related to other kinds of circumstances.

Q All right. Would you please tell me whether malingering would be considered an offense which could normally justify administrative detention?

MR. SCHAFFER: Objection. I think the questioning along these lines have already been answered. The witness has indicated that it depends on the circumstances.

THE COURT: No. I will allow it.

A If, for example, a person indicated that he couldn't work on and we felt that he could work and he was sentenced -- he was a sentenced prisoner, and he was malingering, there may not be any reason to place him in administrative detention. On the other hand, if he were malingering, if he caused a disturbance or a disruption, if he began to use threats and language

and arguments and things of that nature, you are aware it would call for a period of cooling off, administrative detention might be called for.

Q Wouldn't all the circumstances that you have just described as justifying administrative detention for malingering constitute other violations of your rules, making threats or using obscene language?

A Generally that would be true, yes.

Q Would malingering by itself ever justify administrative detention?

A I would have to say again it would depend on the circumstances. I'm not trying to be vague. We are dealing with human beings and it is not that clear cut.

Q Would malingering which was solely an inmate's taking a longer time than was expected to arrive for an escort to another area in the institution -- would that justify four or five days of administrative detention?

A It might. For example, if he was expected to be in a certain area at a certain time for accountability and he didn't show up at that time and we weren't aware of his presence where he was, if we thought he was involved in an escape attempt, it might under

bsa

Taylor-cross

those circumstances. On the other hand --

Q Suppose you knew where he was and suppose the only reason he was being escorted anywhere was for a visit, would that justify administrative detention?

A Under some circumstances it might, and under others it might not, Mr. Young. I don't know how to tell you any clearer than that.

Q Would unauthorized use of a telephone to call another inmate justify locking somebody in administrative detention?

A There have been cases I think where unauthorized use of the telephone can create a very serious problem. For an example, if there is a disturbance on one floor and a person calls another floor to spread that disturbance and encourage others to be involved in that disturbance, then it might be justified to place that person in a position where he couldn't use that phone.

bsem

Taylor - cross

271 2 Q Wouldn't that constitute another violation,
3 namely, inciting to riot or one of the other violations
4 listed in your rules?

5 A Not necessarily, although he might list that
6 and use the shotgun approach and hit the person with every
7 charge possible. But under those circumstances, and if a
8 man or a person was calling another unit just to talk
9 socially, under those circumstances, I doubt it would
10 require a person to be placed in administrative detention.

11 If it were a chronic thing where a person
12 continued to do that, then it might be necessary to pre-
13 vent that person from doing it physically by locking him in.

14 Q And that is prior to a determination of
15 whether or not he actually committed the violation? We
16 are not talking about punitive segregation now, we are
17 talking about administrative detention.

18 A I think we are talking about a lot of vague
19 things that I'm having a difficult time answering.

20 Q Warden Taylor, is a person who is placed on
21 administrative detention always given outdoor recreation?

22 A No, not always.

23 Q Is a person on administrative detention some-
24 times denied permission to attend religious services for
25 that reason?

bsem 2

Taylor - cross

2077

A No. They may not attend a collective gathering, Mr. Young, but they are in administrative detention and they ask to see a chaplain or the rabbi, priest or minister, then that person is brought to them.

Q But they are denied permission to participate in religious services?

A Depending on what they are locked up for, that's correct.

If you are talking about a collective service in a general purpose area, yes.

Q I assume that would include, for example, Jewish High Holy Days celebrations which require a minyun.

A Under some circumstances that might be appropriate.

Q Would it be appropriate for a charge of malingering?

A Again, it would have to depend on the circumstances. If you want to name specific cases, and if I have an opportunity to review, I might perhaps be able to answer you.

Q Warden Taylor, you described yesterday the planned attorney visiting area on the third floor and stated that that would be under, I believe, the supervision of the individuals who currently operate the R&D section, is that

1
2 Petitioner's Exhibit 160 for identification? Do you recog-
3 nize this document?

4 A Mr. Young, it has no heading and no signatures.
5 It is just a list of numbers, and I can't recall that I
6 have ever seen it before or not.

7 Q Would it refresh your recollection if I ad-
8 vised you that that was a document turned over to us by
9 your counsel which was described as listing the daily
10 court totals for the Metropolitan Correctional Center?

11 A Only if it was turned over to me, and I don't
12 recall having seen it.

13 Q You have never seen this document before?

14 A I can't say that I have. I might have, I
15 don't know.

16 Q You estimated sixty to a hundred persons
17 might pass through the R&D section on a given day, parti-
18 cularly, you say, during the winter months, I think was
19 your testimony?

20 A During the peak court activity days, yes.

21 Q And it is your intention that in addition
22 to processing all of those people -- by the way, does
23 processing include, for example, fingerprinting, strip-
24 searching, catalogue clothing, medical examination,
25 photographing and certain other activities related to the

1
2 R&D section?

3 A Yes, it does.

4 Q And does it also include patting people down,
5 arranging for marshals to come to take them to court, check-
6 ing the identification of the marshals, and other such
7 activities?

8 A All of those things.

9 Q And it is your intention that the same people
10 who perform those functions for sixty to a hundred people
11 each day are also going to perform functions of supervising
12 the attorney visiting room?

13 A I think they can do it.

14 Q Are you aware of any attorneys that were having
15 to wait for attorney visits on the third floor?

16 A Mr. Young, that is one of the reasons why we
17 are spending a great deal of money to develop some brand
18 new, very nice facilities for attorneys. That has happened.

19 Q Are you aware that even the attorneys that
20 have used the third floor in the past have had to wait?

21 A Yes, there is one interesting new development,
22 though, that the new attorney conference room will provide,
23 and that is if an attorney gives us even a half hour notice
24 the inmate will be ready waiting for him when he gets there.

25 Q Will that be arranged by the people in R&D?

1 most common cause for cancelling those visits?

2 A The weather has to be the most common cause
3 for cancelling, and even when there is bad weather, our
4 policy is to offer the people an opportunity to go if they
5 like.
6

7 Q Are rooftop visits ever cancelled for any
8 other reason?

9 A They may be cancelled -- in the early months
10 they were cancelled for repairs of the roof, and in other
11 cases when we had either an escape attempt going on or some
12 other kind of problem.

13 Q Isn't it true that one of the most common
14 reasons why rooftop visits have been cancelled is because
15 there is nobody to cover them or take the inmates to the
16 roof?

17 A I don't think that is true.

18 Q Has it ever been true?

19 A I think there have been occasions when the
20 roof was cancelled because staff were not available;
21 however, I don't consider that a legitimate excuse, and
22 when it is brought to my attention it is corrected.

23 Q I'm not asking whether it is a legitimate
24 excuse, Warden Taylor. I am asking whether that is one of
25 the most common causes of cancellation of rooftop visits.

1 9 and ask you to examine that.

2 I believe it continues onto the next page.

3 I ask you whether that refreshes your recollection and
4 whether the unavailability of staff to escort inmates to
5 the roof or to supervision there is one of the most common
6 causes of cancellation of rooftop visiting.

7 MR. SCHAFFER: I don't think the witness
8 testified that he could not recollect. I think he testified
9 that he did not believe it was so.

10 BY MR. YOUNG:

11 Q You testified that you signed this document,
12 and it is true to the best of your knowledge; is that
13 correct?

14 A That's correct.

15 Q Isn't it true that the second paragraph of
16 response to Interrogatory 19 lists nineteen periods of time,
17 either single days or sequences of days, when rooftop visit-
18 ing was limited or cancelled, and that of those nineteen
19 days eighteen are reasons stated for the cancellation,
20 and of those reasons twelve of them state that there was
21 no coverage?

22 A Mr. Young, you asked me over a period of time
23 if it was a common occurrence, and I don't believe it is.

24 I think if you will review the records over
25

bsem12

Taylor - cross

2087

1 bsem12
2 Q During what periods is only one person
3 stationed there?

4 A Mr. Young, it depends, again, on staff avail-
5 ability; on overcrowding the area, and so forth. It doesn't
6 follow, I don't think, any logical kind of pattern. If we
7 have certain days where visiting is light, we may go with
8 one or two. If visiting, on the other hand, gets heavy,
9 why, then we will add another person.

10 Q Warden Taylor, isn't it true that during
11 the week days one officer is generally stationed at that
12 desk in the morning and evening and two are stationed
13 there in the afternoon, and that on weekends there are
14 either one or two stationed there?

15 A That is generally true, but if we get a peak
16 number of people coming in, then we will add additional
17 staff.

18 Q Will you tell us what the duties of that
19 one or two individuals are?

20 A They have to review the files for the visitors
21 who are coming -- the inmates' visitors who are coming to
22 the institution; determine whether or not the visitor is
23 on the visiting list, then check the person through the
24 security devices for the MCC and then make arrangements
25 for them to go to the visiting room.

jqal

Taylor-cross

Q Are the mattresses in the rooms disinfected or treated in any way between residents?

A No. Mattresses, however, that are infected in some way are destroyed, thrown out. If they become soiled so that they can't be used, they are thrown out.

Q Otherwise they are not treated in any way?

A No.

Q Are mattress covers provided?

A No, we provide sheets.

Q Are shoes passed on from one inmate to another. In other words, do you issue used shoes to new inmates?

A We issue sneakers which have been laundered, yes.

Q I can't hear you?

A We issue sneakers which may have been used previously but are laundered before being reissued.

Q Are these sterilized?

A No. They are washed in hot temperature water.

Q Warden Taylor, when an inmate is transferred from the Metropolitan Correctional Center to another institution does he take his commissary funds with him?

jga

Taylor-cross

2100

1 nonprofit basis?

2 A No. We make -- the positions in commissary
3 are generally paid for out of the profits of commissary.
4 So it is an operation which generally is not supposed
5 to cost the government any money. However, we also
6 have one full-time position that is paid out of our
7 regularly yearly budget.

8 Q Other than for payment of those positions,
9 is it operated on a nonprofit basis?

10 A Most of our commissaries lose money.

11 Q Most of your commissaries? You only
12 have one, isn't that correct?

13 A I'm talking about the Bureau of Prisons. Many
14 of our commissaries lose money. And we are not as
15 profitable as some of the others because we don't do
16 the volume that some of the others do.

17 Q Warden Taylor, isn't it true that the coins
18 that an inmate requests to use in the telephones or
19 to purchase newspapers are deducted from the maximum
20 amount they can spend in a commissary in a given week?

21 A Yes. Again, that is a national policy
22 and we don't have local discretionary authority to
23 change that. Although we have made requests for
24 additional pocket money for inmates, we have not re-
25

jgem2

Taylor - cross

visiting hours and roof recreation hours for a given unit are generally scheduled during the same period of time?

A I don't know if they generally are. There are some conflicts, and for good reason.

The reason that there are conflicts is that you can't schedule education classes, visiting and recreation all at the same time without having some conflicts. If we don't have a certain number of people in our educational classes, we lose our funding, we lose the resources for those.

We have looked at various ways of scheduling the many activities that we have at the institution so that we can get the maximum benefit from all of the activities, and we will, once the visiting hours change from 12:30 to 8:30, I think give people choices, alternatives. They can either get their visits at night and go to recreation in the afternoon or vice versa.

So the new system will be an improved version of what we've had. But, nevertheless, we'll never eliminate all the conflicts.

Q Is it your testimony that they are scheduled during the same periods of time or not?

A So there are some conflicts and sometimes there are not.

jgem 12

Taylor - cross

A Because he gets his tail over to our place
as soon as he is finished at his place.

MR. YOUNG: Thank you very much. I have no
further questions.

MR. SCHAFFER: Your Honor, I do have some
redirect and it may be as long as ten or fifteen minutes,
if your Honor wishes to break now.

THE COURT: Yes. We have another proceeding
and we will have to break.

Come back at 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

(2.15 p.m.)

THE COURT: All right, Mr. Schaffer.

MR. YOUNG: Before we begin this afternoon I would ask if you could satisfy the Glenn Miller writ. He indicated he would like to be transferred back to the State institution.

THE COURT: Sure.

MR. YOUNG: As soon as it is brought up.

L A R R Y T A Y L O R , resumed.

REDIRECT EXAMINATION

BY MR. SCHAFER:

Q Mr. Taylor, you testified concerning a number of changes in the MCC. I think specifically you mentioned that the lobby had a new partition. When was that partition first ordered?

A Well, Mr. Schaffer, we started looking into the possibility for dividing the front lobby right after the escape in April 1976, shortly after that and in June or so we began dealing with the regional central office.

That job was completed and we decided that it had to be done and we worked with them.

The first submission was rejected by the

rs2

Taylor - redirect

2123

central regional office based on the fact they felt it would represent a breach of security if we would open up the stairwells into the attorney conference rooms and that front partition was part of that three-step project.

We resubmitted our plan and presented some additional arguments and later on it was approved and over a period of six or seven or eight months we finally got the authorization to build it and it was completed within a very short time after final authorization.

Q You also indicated that new locks have recently arrived for the bathroom doors and visiting rooms. When were those first ordered?

A Those locks were ordered back in June of 1976.

THE COURT: Which locksmith do you use?
I want to be sure not to go there.

THE WITNESS: That's right. You want to make sure you don't deal with a lot of entities we deal with.

Q A number of changes that you indicate were recommended by a task force whose report is in evidence.

When did that task force report get submitted to you?

on cross-examination and the Government had a full opportunity to go into this on direct.

THE COURT: Well, I don't know why it wasn't done on direct but I want to hear about it in any event. You can have further cross-examination if you wish to.

MR. SCHAFFER: It was an oversight on direct and we apologize.

THE COURT: Oversights we allow, don't make any mistakes.

Q If an inmate knows his judgment and commitment has come down who would he approach to find out where he has been designated?

A Any member of the unit management team, and they could call the record office and if a decision has been made on designation, it would be given at that time.

I might say that my own personal policy is that inmates ought to know as rapidly as possible where they are going and when they are going.

But we have some serious problems in providing that in a timely sort of way.

Q When is a bus list usually posted?

A Usually the night before. The reason for that, Mr. Schaffer, is that we often get last minute changes

ars

right up to the very hour that the bus is leaving.

If it is posted before that, from past experience it just means that we have to send out a corrected list and the reason we get last minute notices is that the information about the person leaving is general enough knowledge so that we get several calls from attorneys, U. S. Attorneys, judges, even the State prosecutor asking if he could be taken off for very legitimate reasons.

The information about these legitimate reasons, however, seldom arise with the papers from the Court and it is only when it is called to our attention by one of those sources that we are aware that there is a legitimate reason for holding somebody back.

So that bus list is not posted before then. We would like to give a minimum of 24 hours so people could have a chance to call their families and let them know where they are going but it really leads to a lot of confusion if you post a list once and turn around and post another one because somebody at the end of the line doesn't get the word.

Q Is there any policy of either the MCC or the Bureau of Prisons not to post but list until the night before?

ars

Taylor - redirect

A No, none that I am aware of. We may tell exactly when a bus is leaving but I certainly think an inmate ought to have the right to know when and where he is going just as soon as we know.

Q With respect to the designation of an inmate to other institutions, are there any plans or programs presently in the works for informing inmates about other institutions to which they may be designated?

A Yes. As you probably know, we just developed a closed circuit video tape system and one of the ultimate goals of that system is to be able to provide a brief orientation on the institutions in the region we serve.

So if a man is going to Lewisburg and he knows that he is going there, and most people know by their age and their sentence and so forth, they are familiar enough with the Federal system, they know where they are going to end up, he can tune in to Lewisburg and find out what Lewisburg is like.

So it is to our advantage too when we get this kind of information that we need to be able to give more advanced -- at least something other than crisis planning.

Q Is there any way you can estimate the average time that elapses between when you receive the judgment

jga5

David-direct

1 jga5
2 A Yes, sir.

3 Q When?

4 A The past six months, a little over six
5 months.

6 Q And during that time have you worked only
7 on Unit 5?

8 A No.

9 Q What other unit did you work on?

10 A Unit 3.

11 Q And how many days a week did you work on
12 each of those units?

13 A Well, on Unit 5, two days a week. In Unit
14 3, two days a week.

15 Q During the time that you worked on Unit 5,
16 did you have occasion to make the acquaintance of
17 Susan Braunig?

18 A Yes, sir.

19 Q Can you recall any occasion on which Miss
20 Braunig showed you a candy bar which had bugs in it?

21 A I don't recall that.

22 Q Can you recall any occasion in which Miss
23 Braunig asked you for a clean jumpsuit or linen and none
24 were available?

25 A I don't remember because linen is usually

1 19a6

David-direct

2 issued on a Tuesday. It is a possibility that she
3 could have asked me for some linen and I didn't have it,
4 because at one time I was working 12 to 8 at night.

5 Q In your experience working that unit,
6 have linen, jumpsuits and other supplies generally been
7 available in the closet?

8 A Sometimes it has been available; sometimes
9 it is not available.

10 Q And when it is not available, what is the
11 current procedure for obtaining it?

12 A Well, the resident sees the floor officer
13 for him to try to get it from R & D.

14 Q Have you worked on Unit 5 on any occasion
15 when women have been locked into their cells?

16 A Yes, sir.

17 Q And on those occasions, what are your duties
18 with respect to those women?

19 A Well, if she was not classified suicidal, you
20 would make a round on the hour to check to see if she
21 was all right or if she had to go to the bathroom.

22 Q And if she was classified as suicidal?

23 A On the half hour.

24 MR. SCHAFFER: Thank you, Mr. David. I
25 have no further questions.

1 jga23

Johnsondirect

2 report and submitted a memorandum outlining what he
3 had found.

4 Q And as a result of that memorandum, were so-
5 cial visits terminated?

6 A Immediately. We made the immediate recom-
7 mendation to Warren Taylor that social visiting be just-
8 discontinued.

9 Q And did there come a time when Michael
10 Gardner and Susan Braunig were permitted to have legal
11 visits?

12 A I believe we did receive some direction
13 from the courts that -- and I believe there were several
14 legal-related visits, yes.

15 Q And what is the MCC's policy with respect
16 to legal visits between co-defendants, both of whom are
17 incarcerated at the MCC?

18 A We do require some kind of legal direction
19 from the courts regarding those type of visits.

20 Q And what is the reason for that policy?

21 A Basically what brought it to our attention
22 was on one occasion I believe, without our knowledge,
23 two co-defendants were allowed to visit and apparently
24 it interfered with the case and we received a call from
25 a judge in Philadelphia through the regional office and

jga24

Johnson-direct

he objected very strenuously to that visit and to those two people getting together, and we discussed it in staff meetings and decided that the best policy would be the one that we came out with in December, and that is requiring some kind of legal direction from the judge or from the courts to clarify the issue.

Q To your knowledge, are Susan Braunig and Michael Gardner presently being permitted to have visits at the MCC?

A Not to my knowledge, no.

Q And are you aware of what the reason for that is?

A Yes. The memorandum that I put out in '75 which established that policy was that the unit managers would be responsible for checking and researching each case for the validity of the visiting request, and in this case we received requests again for social visits, which we have already decided were not applicable in this case. We would not allow that for these two individuals.

Q Mr. Johnson, directing your attention to the early morning hours of October 22, 1976, can you describe in your personal experience what occurred that evening?

jga29

Johnson-direct

was in and out during the interviews; and Mr. Al Butler, the warden's executive assistant; and myself.

Q Was a Social Warden Verdeyen at that meeting or interview?

A No.

Q In the course of those interviews, Mr. Johnson did you have occasion to speak to Susan Braunig?

A She was one of the 17 that I interviewed.

Q Could you describe what you said to her and what she said to you?

A Yes. We -- or I explained that -- I outlined the institution rules and regulations, indicated to her that any time that there was a disturbance or there appeared to be some kind of a problem on the floor that the best thing she or any women could do would be to immediately go to her room and shut the door.

Q And what did she respond?

A She was very negative and hostile, and indicated that to me, that she had no intention of doing that.

Q Was there any conversation as to whether or not she had heard the orders the night before to lock in?

A She stated I believe on two or three occasions

jga30

Johnson-direct

that no one person had specifically come up to her directly and said, "Miss Braunig, go to your room and lock in."

Q Did she indicate whether she had heard the general orders?

A She wouldn't reply to that. She only said no one had specifically directed her to go to her room, pointing her out by name and asking her to go to her room.

MR. YOUNG: I am going to object to two parts of Mr. Johnson's last couple of answers. I am going to object to his characterization of Miss Braunig as being negative and hostile. We welcome him to describe exactly what she said, but I object to the use of subjective qualifications, and also I object to his statement that she wouldn't reply and then stating an answer she gave.

THE COURT: The first part I'll sustain and the second part you can cross examine about. But his meaning I think is clear enough.

Q What else was said by you and by Miss Braunig?

A Well, again I attempted to clarify the fact that the best thing to do during any kind of disorder or disruption or any time that someone has seen a mis-

jga31

Johnson-direct

conduct or an act of violence, the best thing they can do is to go to their immediate area, to their room, and shut the door. And I attempted to explain that several times to her.

Q At any time during this conversation did you scream or shout at Miss Braunig?

A I did not.

Q Mr. Johnson, did you ever say to Miss Braunig in the course of that interview that "The riot squad would have been right in clubbing you over the head and dragging you into your room and locking you in"?

A I didn't use those words, no.

Q What did you say to her?

A I indicated that had she not -- she had refused to go to her room, that members of the emergency team would have to take her by the arm and either carry -- and carry her to her room, if need be, if she had refused.

Q In the course of this interview, did Miss Braunig state to you that she had been carried to her room the night before?

A I can't remember that she did, no.

Q Can you recall whether she made any complaint about physical abuse on the night before?

jga32

Johnson-direct

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2 A No, she did not.

3 Q In the course of the interview, did you
4 and Miss Braunig have any discussion about the general
5 obligation to obey a staff member's orders?

6 A Yes, we did. I instructed her that any
7 time any staff member of the Metropolitan Correctional
8 Center gave her a direct order which was reasonable,
9 that she was to comply.

10 Q Prior to that interview, had you ever spoken
11 with Miss Braunig before?

12 A I don't believe I had ever -- in passing
13 I may have said hello. But there was no conversation,
14 no.

15 Q After the conversation between you and Miss
16 Braunig was completed, what happened next?

17 A Because of what I felt was, again, a very
18 negative attitude and she failed to acknowledge the
19 information that I had given her, she did not agree
20 to obey direct orders when given in the future, I felt
21 that she was a direct threat to the safety and
22 security of the institution at that time and that
23 unit and the living unit, and for that reason I instructed
24 her to be returned to her under administrative detention
25 status.

jga33

Johnson-direct

Q And time was that?

A I believe it was midway through the interview. I couldn't say the exact time. It was some time close to noon, but exactly I couldn't say when.

Q Did you subsequently give an order releasing her from administrative detention?

A I called Mr. Harminson in private and I instructed him that he was to write a documentary report, an incident report, on Miss Braunig justifying the reason for placing her in administrative detention.

I also instructed him that based upon an improvement in her general attitude, her willingness to accept counseling, that we would release her immediately after the 4 p.m. count that same day.

Q Do you know whether or not she was so released?

A Yes. Mr. Harminson informed me that he had spoken with her and that he had felt that she had a much more positive attitude and that he felt that at this time she was no longer a threat to the security of the institution or to the morale of the unit at that time.

Q You stated that you directed Mr. Harminson to write up an incident report. What was the charge

jga37

Johnson-cross

Q How frequently?

A His schedule calls for once a week. I'd say that on Friday, for the last four months or so, he has probably come once every third Friday.

Q And does he conduct services at that time?

A No, he does not.

Q I am going to ask you to look at Respondents' Exhibit J and ask you whether or not he comes and conducts services.

A He does not conduct services at this point, formal services, on Friday nights, no.

Q So this document is inaccurate to the extent that it says that he does?

MR. SCHAFFER: Objection. The document speaks for itself.

THE COURT: Well, but I would like to hear what the associate warden says about it.

What is the document?

MR. YOUNG: Respondents' Exhibit J was introduced I believe during Warden Taylor's testimony yesterday. It is their most recent list of religious services.

THE COURT: Yes.

Is it inaccurate, Mr. Johnson?

A 1320

jga40

Johnson-cross

A Probably five.

Q So that to the best of your knowledge, your personal knowledge, you don't know of any service that lasted longer than that period of time, although that one was still going on when you left.

Would you tell us about the Protestant services? When is the last time you attended one?

A Formal Protestant services are actually not held. It is a counseling situation by Referand Lothrup.

Q There are no formal services?

A No, not at this time.

Q I ask you to examine Respondents' Exhibit J and ask you whether that refreshes your recollection as to whether there are any Protestant Services on Sunday at 9 a.m.?

A Yes. That is incorrect. There are no formal services.

Q When is the last time you attended a Jewish religious service?

A March 2nd.

Q Of this year?

A 1977.

Q Was that a normal Friday evening service or

A 1321

jga41

Johnson-cross

1 jga41 Johnson-cross
2 was that a special holiday?

3 A This was a Purim holy day festivity.

4 Q When is the last time that you attended
5 regular Friday night services, or regular -- wait.
6 You testified there are no regular Friday night services,
7 is that correct?

8 All right. When is the last time you
9 attended a World Community of Islam in the West service?

10 A That would have been about three months ago.

11 Q All right. When are those services con-
12 ducted?

13 A Thursday evenings.

14 Q Who conducts those?

15 A The contract imam.

16 Q And is he present every Thursday?

17 A Most of the time he is. If he isn't there,
18 he sends a replacement.

19 Q But you don't know to your personal knowl-
20 edge whether these services are conducted, is that
21 correct? You have not observed them being conducted
22 since the date that you gave?

23 A No, I have observed them being started,
24 yes.

25 Q When is the last time you observed one being

A 1322

jga42

Johnson-cross

1 started?

2 A I believe about three months ago.

3 Q Since then you have not observed them being
4 started?

5 A No.

6 Q Have you observed any part of them?

7 A I have observed the contract imam coming
8 in the institution in preparation for the service.

9 Q When are the Christian Science services
10 conducted?

11 A Those are on Sunday morning.

12 Q Are they conducted every Sunday?

13 A Yes.

14 Q Are they limited to certain units?

15 A Yes. The formal services are limited
16 to units 2 and 5.

17 Q Is that because there aren't any Christian
18 Scientists on any other unit?

19 A From what the volunteer minister says, there
20 are not enough to justify services, formal services,
21 on the other units.

22 Q But there are other Christian Scientists
23 in the building?

24 A There are.

jga43

Johnson-cross

Q Are they permitted to attend the services on the second and fifth floors?

A They were at one time, but presently they are not.

Q Do any of the individuals that you referred to as people who conduct these religious services come to the institution at any time other than when the religious services are being conducted?

A Yes, they do

Q And do they have offices where inmates can go to them or not?

A They have offices, but it is not commonly open to the inmate population.

Q I see. So isn't it true that an inmate has to wait until one of these individuals comes to his unit before he can have contact with him?

A Yes.

Q When he comes to the unit, where is the counseling conducted?

A Which denomination are you talking about?

Q Well, for any of the religious denominations, where is the counseling that you just described conducted?

A When you say counseling, it usually involves

1 rs2

2 Exhibit O?

3 A Yes, I did.

4 Q Doesn't that document state that the inmate's
5 cost of each meal will be \$5 and the inmate desiring to
6 purchase a meal will be required to sign the necessary
7 commissary withdrawal form on March 3, 1977?

8 A That is correct.

9 Q Is that an accurate statement?

10 A That is an accurate statement.

11 Q Warden Johnson, I believe it was your testimony
12 on direct examination that Miss Braunig and Mr. Gardner
13 once obtained a social visit by representing themselves
14 as husband and wife?

15 A I believe that is correct.

16 Q Do you have a document in which they made
17 that representation?

18 A Only the information I received from the unit
19 team who passed it on to me, usually verbally.

20 Q They said that these two individuals were
21 claiming to be husband and wife?

22 A They said that Miss Braunig was passing herself
23 off as Mrs. Gardner.

24 Q But you saw no document to that effect?

25 A No, I don't believe I did.

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Q Did you ever observe any of the requests for visit demands?

A I can't, that would be up to the unit manager.

Q Did you ever grant any requests or indicate anything concerning them that a visit could be held?

A Only the memorandum in December 1975 outlining our policy.

Q But you played no role whatsoever in granting any of Miss Braunig's and Mr. Gardner's requests for visits?

A No, I don't believe I did.

Q Did you play any role in denying them?

A Just the policy memorandum.

Q You never denied a visit yourself?

A Personally?

Q Yes.

A I can't recall that I did.

Q I am going to ask you to examine Petitioner's Exhibit 65 and ask you whether in the course of your duties at the MCC you had any occasion to see part or all of this document?

A I can't recall seeing this, no, sir.

Q Isn't it true that the Warden's decision on a question of this nature would be controlling over you?

1 gs3 Finney - direct
2 respect to this particular question, since there is a
3 challenge under the Administrative procedure Act as to
4 various policies and practices that are in issue in this
5 case, surely the individual who wrote the regulations is
6 an appropriate person to testify as to what went into, in
7 the way of goals, the designing of that procedure.

8 THE COURT: I would be inclined to doubt that
9 in the same way I doubt that a Congressman is a competent
10 witness to testify to the goals and purposes of some
11 statute he wrote. Prisoners have the policy statement,
12 presumably, and it tells its story, and I have it, and
13 if it doesn't convey to them and to me some goals and
14 purposes that you propose to rely on, you will rely
15 on them in vain.

16 If Mr. Finney in his wisdom had goals and
17 purposes in mind, it is for me to decide whether they
18 were achieved or not. I don't see that it adds anything
19 really competent at all.

20 I will sustain the objection.

21 Q Mr. Finney, in the course of reviewing
22 administrative grievances at the Washington level, did
23 this review process in individual cases generate any
24 input into the policy level decisions of the Bureau of
25 Prisons?

gs4

Finney - direct

2231

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2 A Yes.

3 Q Would you explain how that occurs?

4 A I am expected to speak to patterns which I
5 see developing as I review the volume of appeals and
6 convey these especially to General Counsel. He also is
7 aware of this.

8 If we see a pattern of problems developing
9 in an area where we don't have a regulation, then this
10 procedure is expected to surface that and will result in
11 the issuance of a policy.

12 Q Can you think of any specific examples where
13 that occurred?

14 A Yes, I can. We had a number of appeals
15 from Danbury regarding organized crime labeling, and
16 more specifically they were called special offenders,
17 and they were appealing that designation, and I searched
18 for the basis and the criteria used for that label and
19 discovered that it really wasn't spelled out anywhere.

20 So directly as a result of those filings we
21 wrote a policy statement which described offenders which
22 we felt needed some special surveillance for some reason,
23 and that has since been published, a special offender
24 policy statement.

25 Q I believe you testified that as part of your

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2 THE COURT: You always go to surrebuttals
3 and what comes after surrebuttal. I think I'd like to
4 hear you each say one thing on an objection and not
5 this backing and forthing because it destroys my
6 equilibrium, okay?

7 I'm going to sustain the objection but not
8 on the ground used by Mr. Young. I'm going to assume
9 that these statistics are roughly accurate. It's not
10 such a mysterious subject until or unless or until the
11 extent that the petitioners by such further scrutiny as
12 they may undertake show that they're inaccurate.

13 I don't want to spend a lot of time hearing
14 opinions about whether somebody can't figure out whether
15 a BP-9 was granted or denied.

16 Go ahead.

17 Q Mr. Finney, based on your experience as the
18 administrative grievance officer of the Bureau of Prisons
19 do you have an opinion concerning the necessity of
20 outside review for achieving an effective grievance
21 procedure?

22 A Yes.

23 Q What is that opinion?

24 A I don't feel that the addition of outside
25 opinions into this internal process would make it any

1 dws

Finney - direct

2243

2 more effective than it is. We consider when we put
3 the procedure together whether to add outsiders and
4 felt that it would be as effective to have a person who
5 was an insider who understood how the Bureau of Prisons
6 operates, who knows most of the people involved to be
7 able -- and who has standing with the people who are
8 being examined -- to conduct that examination, and that
9 that can be just as effective as involving outsiders
10 in the process.

11 I realize that some other procedures do have
12 outsiders and I wouldn't say that they are more or less
13 effective. Our feeling is that this procedure is
14 effective and has been shown to be effective over the
15 years in reducing the number of petitions to the Court,
16 in getting issues resolved quickly, and that to add
17 additional elements would simply make the procedure more
18 cumbersome and perhaps less effective.

19 MR. SCHAFER: Thank you, Mr. Finney, I have
20 no further questions.

21 CROSS EXAMINATION

22 BY MR. YOUNG:

23 Q Mr. Finney, I believe you testified that you
24 compiled the summary sheets on BP-9's for example on
25 the basis of materials that are provided to you by the

dwa2

Finney-redirect

discrepancies in numbers would be as the result of your change in the classification of a particular complaint based on your review of the log in Washington, D.C., is that correct?

A That is correct.

Q In connection with the time periods established for for replies to BP-9s, is there a provision in the policy statement for response in shorter periods of time in cases of emergency?

A Yes, there is, 48 hours.

Q When an inmate leaves an institution after having filed and received a response to a BP-9 and appeals to the next level of appeal, will that appeal be processed even though he's left that institution?

A Oh, yes.

MR. SCHAPPER: Thank you. I have no further questions.

THE COURT: Okay, thank you, Mr. Finney.

(Witness excused.)

MR. SCHAPPER: Respondents call Robert Harris.

1 dwa7

Harris-direct

2 classes, see how they are going on?

3 A Oh, yes, definitely.

4 Q Based upon those experiences, can you state
5 whether the classes are generally held at the hours and
6 on the days in which they are scheduled?

7 MR. YOUNG: I'm going to still object,
8 your Honor.

9 THE COURT: Overruled.

10 A I'm sorry.

11 Q Are the classes generally held on the days
12 and at the times that they are scheduled?

13 A Yes.

14 Q Are occasionally classes cancelled?

15 A Certainly. People get sick, things like
16 that happen. In the case of a disturbance on a
17 unit a class will be cancelled if things are occurring
18 in such a way that the presence of the teacher will
19 not be considered reasonable, but that happens very
20 rarely though. Teachers get sick.

21 Q Are all of the classes which are provided
22 at the MCC provided for every floor?

23 A All for every floor?

24 Q Yes.

25 A No.

dwa8

Harris-direct

Q Which classes are provided for fewer than every floor?

A Well, we have some classes that we -- we try and relate to prerelease activities. Particularly I'm thinking of the life skills class that meets Monday evenings, and the class in human sexuality and family activities which meets on Wednesday evenings. These classes really only meet on 5 and 2, both for the reasons of preparing people, I guess, those who haven't been in a family situation whatever for a -- you know, for getting involved again in a relatively informed way. And the life skills thing also is ideally supposed to aim at those same things.

Other people do tend to come down since we have changed the population on 5 North though, but the original structure, you know, when these things were set up over a year ago, that was the idea. And it's still the idea.

Q Are there any other classes that are limited to specific floors?

A Yes. The sculpture class also fits into that specific category.

Q Where is the sculpture class held?

A 5, in the pantry area.

dwa9

Harris-direct

Calisthenics class doesn't meet on 5 because people are working at that time, although the women's side, where people do stay during the day who are not working, has a lot of activities. For sure, one activity with slimnastics and gymnastics, that's run by a graduate student.

Q Any other classes that are related to specific units?

A The dance class also is aimed only to the female unit and is conducted there.

The drama class is conducted on the 5 and 2 area basically because it was where we got the best turnout the first time we tried it and we just didn't have any more money to expand it elsewhere, and again the way the building is set up it requires duplication very often.

The creative writing class died on a number of floors and we have finally been able to have it on 3 and maintained it there with a reasonable number of people to make it worth while. It didn't last on 7 very long. It lasted on 9 even less. I believe it didn't last on 11 for more than two weeks either. Again, the transiency of our population has a lot to do with that. One week you have X number of people

1 dwal0

Harris-direct

2 who really want something like that and two weeks
3 later you wouldn't have a number of people around.
4 That will be the problem.

5 Yoga again fits into that category as well.
6 It didn't last on, I think, 9 is where we tried it
7 first, and then we put it on 7 as a second choice, and
8 it managed to maintain some reasonable attendance over a
9 long period of time, so I kept it there and didn't
10 move it.

11 Q What are the classes which are available
12 on all floors?

13 A Well, the ones that we really feel are
14 integral and basic to people's, you know, improvement,
15 if you want to consider that, or just, you know, general
16 betterment or the opportunity -- English is a second
17 language, adult basic education, GED class, which
18 serves the population as a whole, people qualify.
19 And the college program is expanded after its beginnings
20 in September, since I don't call that a class. It
21 really doesn't operate that way, although there is some
22 class-type structures within it occasionally. The
23 college program is available to those who qualify within
24 reason.

25 Q Can you explain how the college program

1 dwall

Harris-direct

2 works?

3 A The college program is through Empire State
4 College, which is a unique type of a fully accredited
5 four-year institution through the State University of
6 New York. And the way Empire State works is that
7 people develop personal contracts, learning contracts
8 with the what we call the mentor or the coordinator
9 of the program in the institution, and these contracts
10 require a certain amount of legitimate college-related
11 work under supervision of what they call a tutor,
12 which I guess in a regular college would be considered
13 an instructor level or assistant professor level-type
14 person, depending on what's going on. And this
15 person meets with the student weekly and monitors the
16 progress of the contract and the progress of the
17 student in performing the goals that they set up mutually
18 in the creation of the contract.

19 This program has, in my opinion, frankly,
20 been very successful within the limits that we were
21 able to get granted for it, and we are expanding it
22 constantly really. The quarterly reports speak
23 to that issue.

24 Q The quarterly report for March 15, 1977,
25 introduced as Respondents' Exhibit AA, makes mention

1 dwal2

Harris-direct

2 of a closed-circuit educational television program.

3 Could you briefly explain what that is?

4 A Well, when I took this job a long time
5 ago, when I was told I would get this job a long time
6 ago in '73, late '73, early '74, and when I started
7 at West Street in April of '74, I was aware of the
8 severely limiting -- what was thought to be at
9 that time -- severely limiting aspects of this building,
10 turning out to be somewhat limiting in a way. One
11 of the ways I tried to combat what we already anticipated
12 as being limited was the creation of this type of system.
13 It took me a long time to get the thing funded through
14 the Bureau, get the money approved, and finally last
15 spring it actually began to become a reality, and we
16 did lay out a plan and a format, and I think I per-
17 sonally ran much of the cable, with a few other
18 people.

19 Q How will it operate?

20 A It will operate by having somebody at a
21 given monitor on a unit request a particular program
22 from a list of programs by simply having the officer
23 or somebody on the unit calling down to the studio and
24 saying, "I'm at TV No.," whatever," and I'd like to see
this program." The person down in the studio will

dwal3

Harris-direct

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2 have access to five open channels, know what's going
3 on in the institution overall, and be able to say back
4 to the guy, "Well, look, right now we have an
5 open channel on channel," whatever. "Turn to that channel
6 and put the thing on." If not, assuming five are in
7 use at the time, the next earliest available time, and
8 schedule him for the next input.

9 This was ready to go two weeks ago and some
10 problems with distribution of keys to units' staff have
11 kept it from opening on opening day.

12 Q Do you already have tapes for this program?

13 A We have 112 programs, separate, discrete
14 programs available at this point, with 45 being in vari-
15 ous stages of reproduction. So that everything is
16 on video cassettes so that things can go immediately
17 at this point.

18 Q Have you prepared a list of available
19 tapes so that inmates can choose from them?

20 A Yes.

21 Q Mr. Harris, I show you Respondents' Exhibit
22 DD for identification and ask you if this is the
23 description and list of available tapes that you have
24 prepared?

25 A Yes, it is.

dwal4

Harris-direct

Q Have these been sent up to the units yet?

A Yes, they have.

Q When was that?

A The date on the memo. I really don't remember the exact date. March 10th sounds right. It's about two weeks ago. I think it was March 11th, as a matter of fact, the day after the memo.

MR. YOUNG: No objection, except that we haven't seen this document heretofore, your Honor.

(Respondents' Exhibit DD was received in evidence.)

Q Mr. Harris, do you use inmates in connection with the educational programs?

A Yes.

Q In what capacities?

A Staff positions in the office, so to speak, administrative roles, whatever.

Q Have inmates on occasion taught classes?

A On a number of occasions, yes. I'm familiar with a couple of occasions where inmates have taught classes. We had an inmate named Martinez who taught the EST class on the 9th floor for a while, about three or four months. I had an inmate working for over a year teaching language. We brought him

dwal6

Harris-direct

2271

MCC?

A Yes.

Q Would you describe the procedure by which paperbacks are brought into the MCC and distributed to the floors?

A Well, insofar as it comes under my auspices, we have a contact with Hudson County newspapers, I forget what the name of the company is, Hudson County, Hudson County News -- that's what it is -- and it's in Jersey City. And every, say, month or six weeks we go out there and pick up stripped paperbacks, which is simply a process where the publisher or the distributor, rather, strips the covers off the paperback books and declares them ready to be thrown out, and agencies such as prisons and hospitals go out and pick up books under those circumstances.

Q Approximately how many books do you pick up?

A Sometimes 3000, 4000, sometimes 2000, 1500, depending on what they have got available at the time.

We are really at their mercy, so to speak.

A 1340

jgs

Harris - direct

2272

Q And after these books are picked up, what do you do with them?

A Lay them all out over the floor of the library and any rooms that are available, the hallway and whatever, in piles of -- set up to indicate what is duplicated and what is not duplicated, and then we bring them up to the units and switch as many books as possible - there are leftovers from previous distributions - and try and continually refurbish the racks of the paperbacks up there.

We don't control them in any way. We encourage people to keep them.

Q Do you also have responsibilities with respect to the introduction of magazines other than those that inmates themselves order, subscribe to or have brought in by friends?

A Yes. We get them from the General Post Office on 33rd Street and do that every two or three weeks, depending on if I have the time or if the Post Office has enough magazines. We call before we go.

It is like the Dead Letter Area, and they have bags of magazines that they assign to the many agencies in the city that go and pick up whatever magazines are available to be picked up at the time.

Harris - direct

952

And we are, again, at their mercy to the extent of magazines that are available or whatever. We usually get a minimum of five bags. But in our building, the way it is, five bags isn't a whole lot. The place is like a sponge.

There are 13 places where magazines have to go when they get distributed, and what happens is we just break them into piles and try and provide as little duplication as possible, and whatever we've got we give out.

Q What about newspapers? What are your responsibilities with respect to newspaper distribution and sales?

A We sell them: daily New York Times, daily Daily News, daily El Diario, and the weekly Amsterdam News. They are sold through us.

We also handle the Sunday Daily News and the Sunday Times and the Saturday El Diario, which is the same as the Sunday paper.

Q And how are these distributed among the floors?

A An inmate goes around and sells them, face value.

Q Does he start in one particular floor each

Harris - direct

1 day and proceed in a certain manner on each day?

2 A Well, he starts on the 11th floor on one day
3 and on the 3rd on the next, and it reverses each day.

4 Q Are you also in charge of the general library?

5 A Yes.

6 Q Did there come a time when an inventory was
7 taken and a list of books printed up?

8 A Yes.

9 Q When was that?

10 A Late January it was all completed, mid-January.

11 Q 1977?

12 A Yes.

13 Q And what did you do with that list after it
14 was completed?

15 A Ran it off on a Rexograph machine and issued
16 one to each bulletin board on the units and one to each
17 unit manager.

18 Q If an individual wishes to borrow a book
19 from the general library, what is the procedure for
20 doing so?

21 A The unit offices have general library cop-
22 y, which are simply request forms with spaces in them
23 indicating what they want, and they put them in the
24 envelope on the Bulletin marked Law Library, and the

gs4

Harris - direct

2275

inmate who does the newspapers also delivers law books and Library books, and he picks up these slips and brings them down to be processed by the inmate who runs the library, among other things, and that afternoon, if it was picked up in the morning, it would go up with whatever was picked Up.

Q How often does this inmate make the rounds to pick up library requests?

A Once a day, and on Friday we like to do it twice, if we can.

Q Are there pickups during the weekend?

A No.

Q Prior to the publication and distribution of the list of books, how was book borrowing from the general library handled?

A Quite honestly, in a slipshod manner. A guy would send out a cop-out, the traditional institutional cop-out, and it would be filled, assuming we could locate the book.

Otherwise, people would through the unit officer and request something. They would Request by topic area because the list wasn't available, and they would say, "I would like to read something in X area," whatever the area would be, and we would try and send up

jgs

Harris - direct

2276

the guy with as representative a grouping of those books, assuming we had any, and let the guy make a choice.

We lost a lot of books that way.

Q Since the publication of the list of books in January, approximately how many book requests for the general library do you get per week?

A Maybe 15. I have it down here some place.

May I consult the documents I brought with me?

Q Are these the quarterly reports?

A Yes. You have them, I believe.

Q If it is in the quarter reports, I'll withdraw the question.

A I'm sure I can answer it.

I don't really remember the exact number.

I'm sure it could be as many as 10 to 15.

THE COURT: 10 to 15 a day?

THE WITNESS: A week.

THE COURT: He said a week.

Q To your personal knowledge, have you ever received any general library requests from Susan Braunig?

A To my personal knowledge? I remember two, personally.

Q And were they filled?

A She requested some music books, and I brought

jgs

Harris - direct

2277

1
2 them up the same day, after I got a phone call, which
3 was after I came in the office and saw a cop-out on my
4 desk. Somebody left it there. And I brought up a
5 selection. It was all we had, actually. We didn't
6 have that many. And she thought they were very good
7 and said thank you very much, and I left.

8 I also have another request, which was dated
9 the 27th of January, requesting two books, Pilgrim's In
10 and Book 29 in the Cervantes Series, signed by Susan
11 Braunig and received by her on the 14th of March.

12 Q Do you know when that request was actually
13 received in the general library?

14 A I was told that it was received on the 13th of
15 March.

16 Q Mr. Harris, were you present during a series
17 of interviews on October 22, 1976 conducted in Unit 5?

18 A Yes.

19 Q Who else was present during those interviews?

20 A Mr. J. R. Johnson, the Associate Warden of
21 Programs, and Mr. Richard Smith, who was the Chief
22 Correctional Supervisor at the time.

23 During the latter few interviews, I don't know
24 how many, towards the end of this series, Mr. Harminson
25 came in, the unit manager on 5, and once I think, or maybe

A 1346

1 jms

Harris - direc5

2273

2 twice, during the whole procedure Mr. butler came in,
3 the Executive Assistant to the Warden, with a message each
4 time for somebody. I don't remember for whom.

5 Q Was Associate Warden Verdeyen present?

6 A No.

7 Q Were you present during the interview involving
8 Miss Braunig?

9 A Yes, I was.

10 Q And can you state what she said to the group
11 of interviewers and what was said to her?

12 A She was brought in. She was toward the end
13 of the list, actually. There were about four or five
14 people to go at that time. She was brought in and the
15 same thing was said to her as was said to everybody
16 else:

17 Were you aware of what was going on in the
18 unit the night before?

19 The incident alluded to the slashing --

20 Q You don't have to go over that. We had
21 testimony on that.

22 A Well, she was brought in and asked if she
23 was aware of what was going on on the unit at the time
24 and was she aware that she was told to lock in.

25 I believe she said that she was in the TV

A 1347

jgs

Harris - direct

2279

room and didn't hear anything going on at the time and that not until much later, I believe, an officer came in and asked her to lock in, well into the incident.

She was asked if she would lock in if an officer told her to lock in, regardless of what the circumstance was, and she responded evasively. I can't remember the quote. It was basically in the nature of:

"I would have to know what was going on.

I don't think I could give you an answer like that right away," something like that.

I really don't remember the words.

Q Who was she conversing with during this time?

A Mr. Johnson.

Q And in the course of that interview, did Mr. Johnson yell or scream at Miss Braunig?

A No.

Q Did Mr. Johnson say to Miss Braunig that if the officer the night before had clubbed her over the head or beaten her or physically abused her, that he would have been right in doing so and that she had to --

A No, never. He never said anything like that. He never said anything like that to any of the people.

Q On that occasion, did Miss Braunig complain

jes

Harris - direct

2280

1
2 about having been physically abused the night before?

3 A I believe something about being pushed around
4 a little, but nothing violent, excessively violent.

5 MR. SCHAFFER: Thank you. I have no further
6 questions.

7 CROSS EXAMINATION

8 BY MR. YOUNG:

9 Q Mr. Harris, I think on your direct testimony
10 you said something to the effect that MCC was a severely
11 limiting building, or something to that effect. Did you
12 use that phrase or a similar phrase?

13 A Yes, I did.

14 Q Would you describe for the Court what you mean
15 by that?

16 A From my personal perspective as a program
17 person, if you will, in terms of managing a certain amount
18 of money, it would be easier, assuming they had built the
19 building by consulting me many years ago, by centralizing
20 activities, because it would just be much easier to have
21 a lot more people exposed to a lot more things, although
22 we've managed, I think, quite frankly, to overcome a lot
23 of problems I thought initially might come up.

24 Q Is it true that you have a teacher employed
25 to teach the E.D. classes named Paul Lanigan?

A 1349

Harris - cross

2281

jgs

1 A Yes, I do.

2 Q And are you aware of approximately how much
3 time he spends each day escorting inmates back and
4 forth from where that class is taught to their individual
5 units?
6

7 A Yes. He starts before the class begins, by
8 about a half hour or 40 minutes or so, and after the
9 class ends it takes them probably, because he is just
10 bringing people back, about 15 more minutes.

11 Q So approximately an hour? Is that your
12 testimony?

13 A Yes. It varies from day to day depending on
14 where the inmates are located.

15 Q Okay. I believe it was your testimony on
16 direct that you get certain grants for some of the programs
17 that you run.

18 A I don't get grants. I hustle for grants.

19 Q All right. And do certain of those grants
20 depend on or are they liable to be revoked if you don't
21 have a certain number of people participating in the class
22 that the grant is for?

23 A Certainly.

24 Q And does the modular --

25 A Some of them.

jgal

Harris-cross

Q What about notices as to other classes, other than GED? Are those always posted?

A We try to keep them current, yes.

Q Do they suffer from the same problems you just described?

A Yes, they do.

Q By the way, are inmates charged any money to participate in any of the programs like the Empire State Program?

A No. Well, college tuition. But we arrange that through basic education opportunity grants.

Q For everyone who wants to participate?

A Assuming they are eligible for the grant. I am thinking of one case in particular where an inmate isn't eligible for the grant because he has income over the last taxable fiscal year and we have had to come up with some money for him on my budget, and the college is working out a way to get some more money for him so he can continue. He will continue.

Q What educational programs are offered in the protective custody unit besides the creative writing course you described?

A Adult basic education class. Three people there just got GED certificates.

jgal0

Hemlock-direct

BY MR. SCHAFER:

Q Mr. Hemlock, as an inmate of the MCC, are you employed in any capacity?

A Yes. I'm a law librarian. I'm also the chaplain's clerk.

Q Could you describe briefly, Mr. Hemlock, what the procedure is by which inmates may request books of the law library?

A Yes. It is a lending library type of operation. On each of the units there is an envelope which is affixed to the bulletin board on that unit, and in the envelope there are law library request forms.

An inmate would take a law library request form, say he wanted a book like Federal Reporter or Fed. Supp., write down the volume and the Federal Reporter 2d or Fed. Supp and sign their name and their number.

The requests are picked up each day by another inmate, not myself, and brought down to the law librarian. There the materials are gotten and the request is attached to a receipt, and then the books, the receipt and the request are brought back to the inmate. The inmate signs the receipt and the inmate then receives the books.

There are rules to the law library and you

1 jgall

2 are allowed three books for any one request, and upon
3 the return of those books you are allowed three addi-
4 tional books and you can continue to order books in
5 that fashion.

6 The books are allowed out for a period of
7 three days.

8 Q Have you personally observed slips for law
9 library books being brought down every day?

10 A Every day.

11 Q Does that include weekends?

12 A The law library is closed on Saturday and
13 Sunday. But Monday through Friday the slips are
14 brought down, and on Friday particularly we pick up
15 the slips twice, or the man in charge picks up the
16 slips both morning and afternoon, so the legal mater-
17 ials can be provided for inmates who want to work
18 over the weekend.

19 Q From the time that you receive a request,
20 how much time passes until you send the books up to the
21 floor.

22 A In the ordinary customary course, one day,
23 sometimes the same day.

24 Q Mr. Hemlock, how long have you been law
25 librarian?

Jal2

Hemlock-direct

A Since some time in July of 1976, about eight months.

Q And in your experience, on the average how many requests do you get per day?

A I would guesstimate about 40, 40 a week, about eight a day. But that varies. There could be 50 in one day and two the next.

Q If we take an average day of book requests, could you give, based on your experience, a breakdown as to what types of requests you would get?

A Most --

Q That is, how many for law books, how many for probation regulations, things like that?

A Most of the requests, by and large, are for Federal Reporter 2d, Fed. Supp., Supreme Court Reporter. The citations are for actual cases. They not only show the volume but show the page and the name of the case.

I would say about 75 per cent -- I'm taking a pure guess. I haven't had an opportunity to really study the slips over those months, although I have the records here with me. But I would say most of them are for the major volumes or for the United States Code Annotated, particularly Title 18.

gal4

Hemlock-direct

1 A Yes. That's the rules of the library
2
3 which we maintain. However, if an inmate indicates
4 that he must go to court the next day or there is
5 some serious urgency and he is seriously doing re-
6 search, we'll have six books or even more, particularly
7 if those volumes are Federal Reporter or Fed. Supp. or
8 Supreme Court Reporter rather than the Title 18s, which
9 are more in demand.

10 Q You also indicated that the rules provide
11 that an inmate may keep the books for three days. Is
12 there some flexibility in the administration of that
13 rule?

14 A Yes. Our records show there are books
15 that are kept out a week, two weeks, three weeks, even
16 longer.

17 Q And on what basis is the decision made whether
18 to recall the books or not?

19 A Well, very often the man who goes up to
20 collect the books, who happens to be the same indi-
21 vidual who picks up the requests and brings them down so
22 that they are filled, will go over to the inmate and
23 ask for the book and the guy will say that he wants the
24 book or the gal will say she still needs the book, and
25 he just goes back the next day and so on, and a period

jal5

Hemlock-direct

1 of time will elapse, particularly if there are no
2 further requests from that part and they are just using
3 those books.
4

5 Q In the event that a request you get can't
6 be filled, what do you do?

7 A Well, my policy since being in the library,
8 is the next day I will have the request returned with
9 the party who picks up the books and the requests, with
10 a note, "Sorry. This book is not available" or
11 "We don't maintain this volume" or "The books is missing
12 from the library and it is on order" or whatever the
13 particular circumstances are, so that the inmate is
14 apprised that his request hasn't gone astray and that
15 he is being at least tended to.

16 Q Do you sometimes get requests that are not
17 for a specific volume but are more of general, vague
18 in nature as to what the inmate wants?

19 A No. There are requests that come down,
20 "Do you have anything on bank robbery?" Or what are
21 the penalties for a particular type of crime? Or "I
22 was just sentenced and how can I have my sentence re-
23 duced?"

24 Q How do you fill those requests?

25 A Well, normally send a note back on the request

jga

Hemlock-direct

2304

form: "Perhaps this book can help you. Rule 35 is a motion to reduce or modify sentence within 120 days," and it gives a statute, or a note "See your lawyer, but this book in addition may help you."

Q By the way, Mr. Hemlock, are you a lawyer?

A I was a lawyer until I was disbarred in June of '76.

Q Are pocket parts received for the law books that are kept in the library, at least those which contain pocket parts?

A At one time the books, all the books, had pocket parts. And when they are ordered, the pocket parts come with the books. But there are some volumes without pocket parts not returned with the pocket part or the pocket part gets lost. However, wherever there is a pocket part, it is affixed to the back of the book. Sometimes the portion of the pocket part that is inserted in the enclosure in the back of the book is torn and it is not together with the book. But wherever possible I regularly go through the books to make certain that the pocket parts are with the books.

Q Are pocket parts ordered and received on a yearly basis, as they would be in any library?

1 A Yes. And in volumes of USCA, particu-
2 larly Sections 1 to 800 and Title 21, and under Title
3 18 certain sections. There are two books of each
4 type because there is a certain loss that occurs
5 with the use of the books.
6

7 Q I take it you see all the requests that come
8 in, is that correct?

9 A Yes.

10 Q Based upon reading the requests and seeing
11 the frequency with which they come from a particular
12 inmate, are you able to determine with some degree
13 of accuracy how many inmates are engaged in a sustained
14 period of research?

15 A Well, it of course varies because the popu-
16 lation varies. But on an average, and this is at
17 best a guess, I would say probably at any one time
18 there are a half dozen or more inmates involved in
19 serious research. Or at least that would be indicated
20 by the types of books requested and the frequency of
21 requests that come down to the law library.

22 Q Mr. Hemlock, do you recall any instance when
23 you received a law library request from Susan Brauniq?

24 A A law library request I don't remember.
25 I know that Susan Brauniq gave a general library re-

1 jga

Hemlock-direct

2306

2 quest, but I don't remember a law library request.

3 Q Directing your attention to the midpart
4 of January, 1977, did there come a time when you received
5 a law library request from Michael Gardner?

6 A Yes, I did.

7 Q Mr. Hemlock, I show you Respondent's
8 Exhibit EE for identification and ask you if that is the
9 request you received at that time.

10 A That's a photocopy of the request, yes.

11 MR. SCHAFFER: May we have a moment, your
12 Honor.

13 (Pause.)

14 MR. YOUNG: We have no objection to it.

15 (Respondents' Exhibit EE was received in
16 evidence.)

17 Q Do you recall the date you received this
18 request, Mr. Hemlock?

19 A No, I don't. But I have a record book
20 which probably can refresh my recollection. It would
21 be in the green, three-hole book.

22 May I, your Honor?

23 THE COURT: Yes.

24 (Pause.)

25 A Well, the books were issued on the 20th and

A 1359

jga

Hemlock-direct

2307

the 19th of January. Now, the request is probably somewhere among the receipts.

Q Do you recall whether the --

A I don't think it was dated. The request form has a blank to be dated by the inmate. I don't date the request forms, nor do I have a time machine when it comes down. So the inmate puts the date on, and the only thing I have in the book that I maintain, the books that I maintain, are the dates that it is issued and the date that it is returned.

Q Do you recall in this instance approximately how much time elapsed from the time you received Mr. Gardner's request until the time that it was filled?

A The next day. It was filled the next day.

Q And at or about that time, in January, 1977, did you receive any other requests from Mr. Gardner?

A Yes, there was a book Title 28, the soft Title 28 was issued on January 25th. On January 26th there were two books issued.

I am just going back a few days previous.

Apparently there were no books issued for the period somewhat before that date of the books that you have in the question.

T4A am1

dws

Hemlock - direct

2 Q Let me ask again, Mr. Hemlock, because that
3 wasn't quite my question.

4 Do you recall receiving any other requests
5 from Michael Gardner at or about January 19, and not filling
6 them?

7 A No, I do not.

8 Q With specific reference to the books requested
9 in Respondent's Exhibit EE, were all of these books issued
10 to Mr. Gardner on January 19 and January 20?

11 A Yes, there were six books under two names,
12 Paul Rogers and Michael Gardner, and I issued all six
13 books. They were all issued the following day.
14 Mike had attached a note as you can see on the exhibit.

15 Q Did there come a time after issuing those
16 books to Mr. Gardner that you received a complaint concern-
17 ing pocket parts or the lack of pocket parts?

18 A Yes, some time thereafter there was a complaint
19 about pocket parts for the Modern Federal Practice
20 Digest, certain volumes which had been given to Mr.
21 Gardner apparently without the pocket parts.

22 Q Did you write a note to Mr. Gardner concerning
23 this subject?

24 A Yes, I did.

25 Q I show you Respondent's Exhibit FF for iden-

ws2

Hemlock - direct

1 tification and ask you if you can identify that document?

2 A That's a carbon copy of a note that I wrote
3 to Mike Gardner on January 26.

4 MR. SCHAFFER: We offer Respondent's Exhibit
5 FF in evidence.

6 MR. YOUNG: No objection, your Honor.

7 (Respondent's Exhibit FF was received in
8 evidence.)

9 Q Did you subsequently deliver or have delivered
10 pocket parts to Mr. Gardner?

11 A Yes, I believe the very next day the pocket
12 parts were delivered to Mr. Gardner.

13 Q Meaning the day after you received his
14 request?

15 A No.

16 Q Mr. Hemlock, I believe you testified that
17 you were also clerk to the chaplain?

18 A Yes, I am.

19 Q Who is the chaplain?

20 A The principal chaplain at the MCC is Father
21 Tolentino.

22 Q Do you also provide services to any other
23 religious leaders who come into the MCC?

24 A Well, I'm kind of designated as chaplain's
25

ws3

Hemlock - direct

2310

1 clerk for the, for all of the chaplains who are contract
2 at the MCC. There is no full-time chaplain at the MCC
3 but there are contract chaplains.
4

5 There is a rabbi, Rabbi Pertasnick. There
6 is Reverend Lothrop who is the Protestant minister.
7 There is Father Tolentino who is the Catholic chaplain,
8 and there is Father Nieves who is a Spanish-speaking
9 Catholic chaplain who comes to the institution.

10 There is also a Christian Brotherhood program
11 called The Oak Fellow program which is led by a Reverend
12 Jack Jarman who is the head of the Park Avenue Christian
13 Church.

14 Q When these individuals come to the institution
15 do you generally accompany them in connection with their
16 duties?

17 A Well, I accompany Father Tolentino when he
18 does the masses on Sunday in the various units. I see
19 Reverend Lothrop when he comes in and if there is some-
20 thing that he needs typed or done in the clerical way or
21 he gives me instructions as to the bibles or religious
22 material that he wants distributed at the, throughout the
23 units, because the Catholic chaplain is the one who takes
24 the portable altar to the various units and it houses the
25 various bibles and legal -- and spiritual material which

ws4

Hemlock - direct

2311

1 is given out on Sundays.

2
3 As far as the other chaplains I don't have
4 much work from Father Nieves and Rabbi Pertasnick.
5 I have acted as rabbi for a number of services at the
6 institution when Rabbi Pertasnick wasn't around during the,
7 some of the High Holy days and I chat with him regularly
8 on the phone if he wants something done.

9 Q Have you had occasion to attend any special
10 religious celebrations or services since you've been at
11 the MCC?

12 A Yes, I have.

13 Q Which celebrations or services have you
14 attended?

15 A Almost all of them with the exception I
16 believe of Chanukah. I think I was on furlough at that
17 time.

18 Q Did you attend the Purim celebration?

19 A Yes, I did.

20 Q This past month?

21 A Yes.

22 Q Where did that take place?

23 A It took place in the seventh or ninth floor
24 visiting room, I don't recall which one. I believe it was
25 the ninth floor visiting room.

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Q Could you describe what occurred?

A Yes. There was a service followed by, with, there were books of course and yarmulkes given out and it was followed by a Purim meal. It was a catered kosher meal.

Q Did you attend any religious celebrations in connection with the High Holy days last fall?

A Yes, Yom Kippur and Rosh Hashanah holidays. As a matter of fact I think there were nine services or ten at varying times, morning and evening, and they were held on the seventh floor visiting room or in the seventh floor visiting room. I think the rabbi only came for one of those services.

The other is I was the leader and we had a kind of community congregation participation service. Some were in the morning. Some were in the evening. That's for both the Rosh Hashanah-Yom Kippur. I think there were eight or nine occasions when the Hebrew residents enjoyed prayer together.

Q Were you given yarmulkes and prayer books on those occasions?

A I believe there were prayer books and on one of the holidays there were no yarmulkes.

Q Were there any other Jewish celebrations that

1 you've attended since you've been at the MCC?

2 A Pretty much all of them, and during the
3 Rosh Hashanah-Yom Kippur the two of the services at the
4 end of Yom Kippur, which is the High Holy fast day, there
5 was a catered kosher meal, and at the very beginning of
6 the Rosh Hashanah High Holy days there also was a catered
7 meal, catered kosher meal.
8

9 Q Approximately how many Jewish inmates
10 participated in the High Holy day services?

11 A There were I think the greatest number for any
12 one of those eight or nine or ten services was about 25
13 or 27, and on one of the services I believe it was as
14 low as eight or nine.

15 Q What about the recent Purim celebration?

16 A I think it was somewhere around 20, 22.
17 I don't remember exactly.

18 Q Can you specify any other Jewish holidays that
19 you celebrated at the MCC? You said all of them, but
20 could you be more specific?

21 A Chanukah I didn't celebrate. I think there
22 were probably in the last year about five, five specific
23 holidays.

24 Q Can you just describe generally what would
25 occur on each of those holidays?

A 1366

1 dws

Hemlock - direct

2314

2 A We would get together in one of the visiting
3 rooms. If the rabbi wasn't present well there had
4 been a memo which would be out generally signed by an
5 Associate Warden of programs which was to be distributed
6 on all the floors that there would be services and the
7 men would gather from the various units, taken generally
8 by internal security unless they were minimum custody red
9 strippers who could travel freely through the building,
10 and then I would generally start the service.

11 The services were done in English. I do not
12 speak or read Hebrew, and the service would be conducted.
13 If there was a meal served there would be some portion
14 which would be provided by the Food Service, either grape
15 juice or coffee generally afterwards and then the, we'd
16 after the service invariably we'd have the meal and then
17 the inmates would be taken back to their respective units.

18 (Continued on next page.)
19
20
21
22
23
24
25

dwal

Hemlock-direct

1 Q Were you on furlough during the entire eight
2 days of Chanukah?
3

4 A No, I had a -- I was on furlough I think
5 five and a half days, but during the period that they
6 were meeting for Chanukah.

7 Q Durir other days of Chanukah that
8 you were in the . ion did you observe any evidence
9 of celebration of the holiday?

10 A No, I didn't personally. I know that there
11 were Menorahs and candles for distribution, and I
12 personally didn't observe any services during the time
13 that I was at the institution.

14 Q Where did you observe the Menorahs and
15 candles?

16 A Well, they were sent into the institution,
17 and Father Tolentino had them in his vestment room and
18 we gave them out to those inmates who wanted them, and
19 they kept -- they kept the Menorah and the candles in
20 their rooms.

21 Q You personally participated in the handing
22 out of the Menorahs and candles?

23 A Well, I know some that I gave it to. I
24 think one was Alex Becker and a female, Alex Becker and
25 a couple of others who wanted them. At the time

1 dwa2

Hemlock-direct

2 there was a yeshiva graduate who no longer is here.
3 I don't remember his name. He was on a study and
4 released by the court, and I made certain that he had
5 the Memorah and candles.

6 Q Have you had occasion to participate or ob-
7 serve special religious celebrations of any other
8 religious groups besides Jews?

9 A Aside from the Sunday mass, which I parti-
10 cipated in the reading of the epistles and responsorial
11 psalms with Father Tolentino, I've had no occasion to
12 observe, although I've seen notices on the board with
13 regard to certain Muslim services and other services.

14 MR. SCHAPPER: Thank you, Mr. Hemlock.
15 I have no further questions.

16 CROSS EXAMINATION

17 BY MR. YOUNG:

18 Q Mr. Hemlock, how long have you been law
19 librarian?

20 A For about eight months, from about July of
21 '76.

22 Q Are you the only inmate who is authorized
23 to actually use the law library, be inside?

24 A Well, there are red-strippers who come in
25 and look around. I'm the only one authorized to issue

dws

Hemlock - cross

2325

1 A No, he does not.

2 Q Concerning High Holy day services, has he
3 always been present at High Holy day services?
4

5 A No, he has not.

6 Q. Did you identify any services over the time
7 that you've been at MCC that he hasn't been present?

8 THE COURT: That he hasn't been present?

9 MR. YOUNG: That he hasn't been present, yes.

10 THE COURT: He said lots of them.

11 Q Why don't you just tell us which ones he has
12 been and we can assume then that he hasn't been at the
13 other ones.

14 A I would say in the last year the rabbi
15 conducted services on probably half a dozen or less
16 occasions and of those all perhaps save one or two were
17 for special Hebrew High Holy days.

18 Q Have you ever complained of this condition?

19 A Yes.

20 Q Who did you complain to?

21 A I complained to Father Tolentino, the principal
22 chaplain, and I spoke with an Associate Warden, J. R.
23 Johnson in charge of programs.

24 Q What did you state to them?

25 A I told them that the Hebrew personnel were

1 dws

Hemlock - cross

2 interested in having a regular Friday evening or Saturday
3 morning service each and every week, and they would be
4 hopeful that steps would be taken so that that kind of
5 service could be conducted.

6 Q Did you attend a Chanukah meal at MCC last
7 December?

8 A No, I was on furlough during that meal.

9 Q How about Rosh Hashanah?

10 A Yes, I did. There were two of them during
11 Rosh Hashanah-Yom Kippur. The holiday was over a two
12 week period of time.

13 Q Was the rabbi present during those observances?

14 A During the two-week period when various
15 services were conducted the rabbi prior to Rosh Hashanah,
16 which was a Friday night, had a Thursday night family
17 service, pre-holiday service, in which the inmates and
18 their families -- I believe it was limited to two members
19 of the inmate family -- were able to attend --

20 It was one of the visiting rooms and the rest
21 of the services, the balance of the services I led as
22 so-called acting rabbi along with a participating
23 congregation.

24 Q By the way which sect of the Jewish faith
25 do you belong to?

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A Conservative.

Q Are you qualified as a rabbi?

A Excuse me?

Q Are you qualified as a rabbi?

A No, not at all.

Q I think you've testified also that you helped Father Tolentino conducting Catholic religious services, is that correct?

A Yes, I do.

Q Are you present when those services are conducted?

A Yes, I participate in the conduct of services.

Q Approximately how long does mass last?

A Well, until about three weeks, until about a month ago, Father did services, conducted services five separate masses on a Sunday between the hours of one and four.

In the last half dozen weeks there are separate services on each side of the fifth floor. Prior to the five-six week period of time that I'm discussing those services were together and now the Father does services on 5 North and 5 South, & North, 9 South, 11 North, and then after four o'clock he does his sixth service in the protective custody unit on the

1 dws

Hemlock - cross

2329

2 the most.

3 Q So it's your testimony that he hears con-
4 fession from one or two individuals in each unit and --

5 A Not in each unit.

6 Q Just in the entire institution?

7 A Yes, and many times there is no confession.

8 Q And then takes five to seven minutes to go
9 from each unit, and then in addition he conducts approx-
10 imately a 25-minute mass, is that right?

11 A Yes, I would say so.

12 Q Have you had occasion to observe the Protestant
13 chaplain conduct services?

14 A Yes, I have.

15 Q Do you assist him in that, too or --

16 A Well, I never assisted him except on one or
17 two occasions when Father Tolentino couldn't be present
18 and at that time Reverend Lothrop conducted an ecumenical
19 service for both the Protestant residents and the Catholic
20 residents.

21 During those two ecumenical services I assisted
22 him in the conducting of the service.

23 Q Are you aware of whether the Protestant
24 chaplain conducts services on a regular basis?

25 A Yes, he does.

1 dws

Hemlock - cross

2330

2 Q When are those conducted?

3 A On Sunday.

4 Q But you've never personally observed that, is
5 that correct?6 A Well, I've kind of run into him conducting.
7 Sometimes he's conducting service on a unit as we enter
8 with the altar for the Catholic services and I hear the
9 end of his service. But I know that he's in the
10 building, and we all kind of meet in the vestment room
11 about a quarter to one prior to getting vested and dressed
12 for services.13 Q By the way, you testified that you registered
14 a complaint concerning the lack of the rabbi's presence
15 at MCC. Was anything done as a result of that
16 complaint?17 A To my knowledge Warden Johnson contacted the
18 Board of Rabbis who had to do with the placement of
19 Rabbi Pertasnick at the institution and in addition I
20 sat in on two or three meetings with Warden Johnson,
21 Father Tolentino and the rabbi, and discussion was had
22 regarding obtaining a seminary student or the rabbi
23 himself conducting services at the institution on perhaps
24 a Thursday night, doing a Friday night service on
25 Thursday.

dys

Hemlock - cross

2331

The rabbi indicated that he had some very heavy commitments in his own synagogue. He's connected to a synagogue at 305 Schermerhorn Street in Brooklyn, and he made certain commitments and promises. However, no services have been conducted to date and presently I know Mr. Johnson told me he was working with the Board of Rabbis to either have him replaced or do something to have a regular service.

Q But to date nothing has been done?

A No, nothing has, sir.

Q How long has Rabbi Pertasnick been assigned to the MCC?

A To my knowledge the rabbi has been contract
rabbi since the institution opened August 1, '75.

Q You testified that he's normally not present to conduct Friday evening-Saturday morning services.

Are Jewish inmates allowed to gather for religious services during either of those time periods?

A I don't know if any provision has been made for Jewish inmates to get together during those services. Whether they do or not I don't know. I can only tell you on my unit they don't get together for the services.

Q By the way, was it your testimony that such religious materials as the skullcaps and other implements

1 dws

2 that are necessary to conduct Jewish service are
3 available?

4 A There are yarmulkes and during the High Holy
5 days the Hebrew personnel made their own books during the
6 Rosh Hashanah-Yom Kippur.

7 We photostated a full service, several, two
8 full services which we used and bound them together and
9 gave them out, but there were no books available, no books
10 available. However, books have been ordered. They should
11 be in this week for regular Friday night services which
12 as I said hadn't been conducted or haven't been conducted
13 as of yet.

14 (Continued on next page.)

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Q On September 24, 1976 did you attend the

Rosh Hashana services?

A I don't know the date of Rosh Hashana but

I imagine so, if there was a service in the institution.

Q Do you recall whether for Rosh Hashana ser-

vices the yamilkes and other religious materials were

available to the inmates?

A On the first night of services the books

were available, that I know, I brought them myself, and

I had been involved in making the books, so to speak.

The first night of services though there were no skull

caps available. They had been, they had not been

delivered by Rabbi Potasnick. I think they came the

second or third day.

Q By the way, how long did you say your

sentence is?

A Seven years.

Q Are you designated to the Metropolitan Cor-

rectional Center?

A Yes, I have been since July of last year.

Q Based on your experience at the institution,

do you know of anybody else who has that long of a

sentence that's designated there?

A Yes, there a number of people who have sentences

dwa4

Hemlock-cross

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A Yes, it does.

3

Q Did you recently receive any requests for

4

Bureau of Prisons policy statements?

5

A Yes, I receive them periodically. I mean

6

fairly regularly. A couple, maybe, a week, or at least

7

one a week.

8

Q Did you recently receive one from Michael

9

Gardner?

10

A Yes, I did.

11

Q Were you able to fill that request?

12

A No, I believe I answered I think it was just

13

this week or last week that I received the request for

14

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for a policy statement. And as I have been instructed

16

to do I sent a notebook with the Federal Reporter

17

telling Mr. Gardner to request the policy statement from

18

a member of his unit team. I think he was, when the

19

request came in, on the 9th floor.

20

Q Is there some policy why the library doesn't

21

distribute those policy statements?

22

A Yes. It's easier, I understand, to get

23

them photostated by a unit team member since the library

24

has no photostat machine to do that work. We would

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have to go to a unit team or the business office.

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Hemlock-cross

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ars

2343

UNITED STATES OF AMERICA
ex rel, LOUIS WOLFISH, et al,

vs.

75 Civ. 6000

UNITED STATES OF AMERICA,
EDWARD H. LEVI, etc.

New York, March 24, 1977;
10.00 o'clock a.m.

(Trial resumed.)

- -

THE COURT: All right, Mr. Corsi.

MR. CORSI: The respondents would call Dr.
George Camp.

- -

G E O R G E M A L L E R Y C A M P , called as a
witness by the respondent, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. CORSI:

Q Dr. Camp, what is your present position?

A I am presently First Deputy Commissioner of
the State of New York, State Division of Criminal Justice
Services.

Q How long have you held that position?

A Since January 6 of this year.

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1 ars

Camp - direct

2344

2 Q Prior to that time what position did you
3 hold?

4 A I was Director of the State of Missouri
5 Correctional Services which included the Department of
6 Corrections, Probation, Parole and Youth Services.

7 Q Prior to that would you give us a brief
8 listing of your associations in the field of corrections?

9 A Prior to that I served as Assistant Commis-
10 sioner of Corrections in New York City, Department of
11 Corrections for about two and a half years.

12 Prior to that, for eight years, I worked at
13 the Federal Bureau of Prisons at the Federal Penitentiary
14 at Terre Haute, Indiana, Marion, Illinois on two
15 occasions and the Federal Correctional Institution in
16 Lompoc, California. There was an interlude when I was
17 on leave of absence from the Bureau to return to school.

18 Q What is your educational background, Doctor?

19 A A Bachelor's degree in American literature
20 from Middlebury College; a Master's degree in criminology
21 and corrections from Florida State University and a PhD
22 in sociology from Yale University.

23 Q Dr. Camp, I am showing you what has been
24 marked as Respondent's Exhibit GG and ask you if you can
25 identify it?

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 A 1381
Camp - direct

2345

2 A It is a copy of my resume.

3 MR. CORSI: At this time we would offer GG
4 into evidence, your Honor.

5 MR. MUSHLIN: No objection.

6 THE COURT: Received.

7 (Respondent's Exhibit GG for identification
8 was received in evidence.)

9 Q Dr. Camp, in addition to the professional
10 affiliations and associations listed in your resume,
11 have you been involved in any other correctional positions
12 or associations?

13 A Well, in addition to the resume I have worked
14 on establishing the National Institute of Corrections
15 four or five years ago. I assisted in drafting the
16 program that would eventually become what is now known
17 as the National Institute of Corrections'

18 I have also served as a consultant to the
19 Stamford Research Institute to assist them in coming up
20 with means to prevent bank robbery in this country.

21 Q Have you testified in any judicial proceedings
22 involving correctional matters and conditions of confine-
23 ment?

24 A Yes, I have on two occasions.

25 The first was in an action, the Hope case in

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1 ars

Camp - direct

2 1975 when I testified on behalf of the State of Arkansas
3 in the Federal Court.

4 Q What was the general topic that you testified
5 about in that case?

6 A The topic was broad in nature and encompassed
7 the entire range of conditions of confinement. In effect,
8 whether or not the prison sentence under its present
9 conditions represented cruel and unusual punishment to
10 those confined there based upon disciplinary procedures
11 and overcrowded conditions that were alleged to be
12 present.

13 Q You indicated that you testified in two
14 cases. What was the other case?

15 A The second case was in the Western District
16 of Missouri, Federal Court, before Judge Oliver.

17 That concerned -- I have forgotten the exact
18 title. It was Aaron versus the Clay County Jail where
19 again the conditions of confinement for pretrial prisoners
20 was under question and in that case I testified for the
21 plaintiffs concerning the conditions of confinement.

22 Q When approximately did you testify in that
23 case?

24 A That case was -- I testified in the spring
25 of 1976, early spring, late winter of 1976.

Camp - direct

ars

Q In those cases were you qualified by the Court as an expert in the field of correction?

A I was. In both cases, yes.

Q Have you been asked to testify in any other cases concerning conditions of confinement?

A I have been asked in this case by the Government to testify and I have been asked by counsel for the plaintiffs also to testify.

Approximately one week after I was asked by the Government to testify in this case, I was contacted by counsel for the plaintiffs and they asked me to testify. Before they went any further I indicated that I had already been asked. Had I not been asked I would have been glad to testify representing them.

MR. CORSI: At this time based upon Dr. Camp's experience and education in the field of corrections, we ask that he be qualified as an expert in the field of corrections in this case.

MR. MUSHLIN: No objection, your Honor.

Q Dr. Camp, have you visited the MCC?

A Yes, I have; on several occasions.

Q When was the first time that you visited the MCC?

A It would have been in December of 1975.

ars

Camp - direct

1 Q The protective custody unit?

2 A Yes, indeed.

3 Q Did you consume any meals at the MCC while
4 there?

5 A On two occasions. I ate the noon meal on
6 my first visit there back in 1975 and I had the evening
7 meal St. Patrick's Day night, March 17. I think that
8 meal was on 11 South and the meal that I ate on the
9 earlier occasion on the previous visit was on the women's
10 unit, 5 South.

11 Q Did you have occasion during the times you
12 visited the MCC to speak with inmates and staff?

13 A Yes, indeed. Each time I went through the
14 facility, whether it was in terms of looking at it for
15 design purposes for another facility or in connection
16 with this particular case, I spoke with staff as I went
17 through and with the men and women that I met as I
18 visited.

19 Q Did you form an opinion as to the relation-
20 ship between staff and inmates as a result of your
21 visits?

22 A I did.

23 Q What is that opinion?

24 A I would say in general -- in fact without
25

Camp - direct

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exception -- in particular during the visits during this year in January through March, that the relationship between staff and inmates was very good, there seem to be very little tension. Not only was the relationship between the staff and inmates good but the relationship between the inmates I thought was very good.

In many correctional facilities and detention facilities throughout the country, blacks and whites separate themselves from one another. Hispanic inmates tend to separate from others.

In the California prison that I worked at various American Indian tribes seem to group together.

Yet, during my observations on the various floors there was good intermix of relationships between inmates of all ethnic backgrounds in terms of the way they wrap together in the way they were playing pool and Ping-Pong, watching television.

In fact, the night of March 17 when I was there when I ate the meal with the men there, they were very, very relaxed, very cordial.

Q That was on 11 South?

A On 11 South, yes. And it was true also in other places but that is where I ate and they knew who I was, I explained who I was when we began to talk. In some

1 ars

Camp - direct

2 cases I was asked and I said. It was a very pleasant
3 evening.

4 Q Would you tell the Court what a shakedown
5 period is for a new institution?

6 A When a new facility is opened, just as when
7 any new building or ship -- basically that is where the
8 term was generated or originated -- there is a period of
9 breaking in the facility.

10 It is a new building, it has been designed by
11 the architect and the planners and now you are putting
12 it into operation. You are incorporating a program
13 into a facility. That takes a while to do.

14 You have to get used to the new facility, it
15 is not the same as the old facility, it is a different
16 facility from where you worked before. You may have
17 staff that have never been there before.

18 And, in addition to that break-in period, you
19 also have a change in the environment around the facility.
20 By that I mean the purpose for which an institution was
21 originally designed may have changed over time because
22 there is a considerable time lag between the design time
23 and the time that you begin operating that facility.
24 I think that was true here in New York --

25 Q You are referring to the MCC?

ars

Camp - direct

2354

A The MCC in New York City.

In addition, as opposed to many other correctional facilities when they opened, they are usually opened with a small cadre of people and, as I recall, this facility was opened pretty much with a mass transfer by moving people from the old jail on West Street over to this facility.

So you have not only new staff, although some worked at West Street, you also had inmates being brought over to a new facility. It takes a while to iron out the kinks.

Also you have people when a new facility is opened who are looking to improve their careers, they may not have moved as quickly as they would have liked and they see the opening of a new facility as an opportunity for a fresh start to move ahead.

Unfortunately, not in all cases but in some cases they bring to this new facility some of the same problems they had in other facilities so you have the period where the staff has to coalesce, come together.

You have a situation at the MCC here where this was the first design by the Federal Bureau of Prisons in the detention area, getting into a new area and I think these factors, plus the fact that the Federal Bureau

1 ars Camp - direct 2355

2 or Prisons was competing and still is competing with the
3 New York City Department of Corrections that pays a
4 much higher salary and to be able to recruit people when
5 the wage differential is significant, makes it difficult
6 to get people.

7 To compensate for that, it takes time for the
8 Bureau to sell what I personally think is one of their
9 strong points, that is the very fine career staff develop-
10 ment program.

11 If you want people to come and work for the
12 Bureau of Prisons, you have to let them know that if
13 they do a good job, the job is based on performance, they
14 could move ahead and move up the career ladder.

15 In many other states and cities, particularly
16 New York they advance themselves based not on your
17 performance and ability to work with people but based
18 upon your ability to take an examination which, in my
19 experience, may have very little to do with your ability
20 to work with your fellow workers and work with inmates
21 and detainees.

22 It has taken the Bureau of Prisons a while to
23 do that and when I first contacted the MCC here in New
24 York to make a visit with my staff from Missouri -- this
25 was a small incident -- it took forever to respond to the

1 ars
2 phone and it took forever to get through to the Warden's
3 office, I was misconnected and had to redial and so
4 forth.

5 There is a difference now in terms of being
6 able to call and communicate an get through. There is
7 also a difference in terms of the staff attitude. When
8 I first visited, I noted that some of the people, the
9 mechanical services, were very disgruntled and wanted to
10 go back to West Street, to go back to the good old days.
11 They didn't like the new facility.

12 I think it was part of the natural process
13 where there is nothing as good as the way things used to
14 be and nothing as good as the way things are going to be
15 in the future. They are never satisfied about the way
16 things are currently. So that is not there, one should
17 not be totally satisfied but it was the kind of bitching
18 and it was more than just normal.

19 But upon subsequent visits, there is far
20 less of that. The staff is much more courteous,
21 more friendly, and they didn't know me from Adam's old
22 fox in many instances.

23 One would expect if you are coming to testify
24 in the Government's behalf and they know that, that
25 maybe they are going to put on a little bit of a show

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Camp - direct

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for you, but that did not happen to be the case because
they didn't know me in many instances and I was out of the
Bureau a long while.

(Continued on next page.)

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Camp-direct

2358

Q Dr. Camp, how long, generally, is this shakedown period?

A It varies. But from my experience at Marion, where I did work during that period, it takes anywhere from 18 months to two years. And, again, it depends upon various factors that I've mentioned.

Q Dr. Camp, I believe you indicated that you've been through all of the housing units. What kind of housing facilities are on the 11 South unit at MCC?

A There are a series of what I would call squad rooms, a large common area.

Q What is a squad room?

A Well, in my thinking, a squad room -- of course is obviously not a cell or an individual and it is not a dormitory. It is that middle ground in between, and it can vary in size from six people to 15, 20, depending upon, you know, the kind of facility. But that's basically what I would consider a squad room.

Q Do you have an opinion concerning the use of squad rooms to house individuals in a correctional facility?

A My opinion is that it is certainly not in-

jga2

Camp-direct

1 appropriate. Some individuals prefer to live in
2 individual cells. Others prefer a dormitory setting,
3 where there would be more movement and less confining,
4 in particular during the evening, the late evening, when
5 a person may be locked in. Others may not prefer
6 it because it does not afford as much privacy as an
7 individual cell.
8

9 But I certainly don't see it as being
10 something that should be totally excluded from any type
11 of correctional facility.

12 Q Dr. Camp, would you tell the Court what
13 maximum-security custody is?

14 A Maximum-security custody, to me, means a
15 situation where an inmate, or a detainee, is confined
16 for the major portion of a 24-hour period in a cell,
17 for as much as 23 hours out of 24 hours, and where he
18 or she's movements are limited basically to that
19 cell except for a shower or recreation. And usually
20 that recreation and that showering is done individually.
21 In some cases under maximum security, that individual
22 would not be removed from that cell unless there was
23 a two-man watch, and by that I mean two or more people
24 present, because the staff, based upon experience with
25 that individual, has seen that person to be assaultive

jqa3

Camp-direct

or potentially dangerous.

That, to me, is what maximum security is.

Q Does the relationship between staff and inmate or accessibility between staff and inmate also affect whether or not someone is in maximum-security custody?

A Well, I think obviously so, in that if you are confined for the better part of a 24-hour period in a single cell, your access to other inmates and your access to staff is limited, and it is dependent upon the staff's initiative to come and see you, probably with the exception of visiting, and to my mind maximum security does not preclude visiting. I think that goes without saying. With a person, even if he is in maximum security, maximum custody, that visiting does continue.

Q Have you formed an opinion on the type of custody under which people at MCC are confined?

A In terms of the terminology that I have been accustomed to and that I think other people use, I would term it medium custody. I would say there is maximum, close, medium and minimum.

And I say that it is medium because while the MCC here in New York does provide fairly substan-

jga4

Camp-direct

1 jga4 Camp-direct
2 tial perimeter security, the movement within a housing
3 unit is fairly open except from the time that people
4 are locked in at night until the time that they come
5 out early in the morning.

6 Certainly there is no as much movement within
7 the facility, and by that I mean from floor to floor,
8 as there is within medium-security, post-sentence facilities
9 that are run by the Bureau of Prisons or by most states,
10 although there are correctional facilities right here
11 within the State of New York that do have movement between
12 housing units and from housing units to dining areas
13 that permit the inmate to go to the dining area, and
14 yet they are escorted, with officers, in groups, with
15 night sticks, and they do eat under a gun or under
16 gas, and by that I mean that gas or guns are available
17 to staff while inmates are eating below them.

18 Those institutions are considered close
19 custody, perimeter security towers, with armed officers,
20 and yet the movement within the facility is allowed,
21 but it is allowed only under escort, primarily.

22 Q Dr. Camp, it is stipulated in this case that
23 inmates, except for those who are part of the design-
24 ated cadre for sentenced prisoners at MCC, are con-
25 fined to their living unit except when they are escorted

1 jga5

2 to other areas of the institution for special purposes.
3 Do you have an opinion as to whether that practice is
4 in conformity with accepted correctional practices?

5 A In my opinion it is in conformity with
6 good correctional practice. I say that because I
7 think one has to examine who it is that is confined
8 in a facility such as the MCC here in New York and for
9 what period of time.

10 When more than half of the individuals
11 confined there are there for 10 days or less, when more
12 than three-quarters are there for 30 days or less,
13 and where almost 90 per cent are there for 60 days or
14 less, it is not easy to readily get to know who it is
15 that is being confined there.

16 In many instances, when an individual is
17 remanded to the custody of the Department of Justice,
18 the marshals do not even supply the amount of bail
19 under which the individual is being held, and the only
20 information that the staff has is the charge and the
21 person's name.

22 And just as in a post-conviction facility,
23 it takes, you know, anywhere from three to four weeks,
24 it is usually a four-week period, of admission and
25 orientation, during which the staff gets to know the

A 1336

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Camp-direct

jga6

1 individual and the individual gets to know the institu-
2 tion, what is expected of him. They live in a separate
3 area for the most part, they go to activities in a group,
4 and during that time a determination is made as to
5 whether or not they should remain in that facility, to
6 to an institution with less security, more security,
7 what sort of program they should embark on.
8

9 And I think the same thing could occur and
10 should occur at the MCC, where during the time the
11 individual is there, as short as it is, they get to know
12 them.

13 Once they are able to know that this person
14 is there on relatively low bail, a relatively minor crime
15 in the sense that maybe it is a property crime as opposed
16 to a crime of violence against a person, then you can
17 begin to let that person move throughout the facility.

18 And I don't know of any good-thinking
19 correctional administrator who would not want to
20 have pretrial detainees as much as possible work and
21 move throughout the facility, but only after they've
22 gotten to know them, because the administrator has a
23 responsibility for assuring the safety and security
24 of everyone within that facility, and we know, I know,
25 that there are people at MCC who are there because

jga7

Camp-direct

1 they are testifying in very sensitive cases, where their
2 lives have been threatened and would be threatened
3 if the wrong person got near them.
4

5 So an administrator has to take these fac-
6 tors into consideration and make sure that something
7 doesn't happen to those people. At the same time,
8 you have to balance that against maximizing the amount
9 of movement, not only on the floor but between floors.

10 But in order to do that, you have to get
11 to know the people in the institution. But where almost
12 90 per cent are only there for 60 days or less, it makes it
13 difficult.

14 So it is something that the administration
15 should push for, not only here but elsewhere, but at
16 the same time balance that against the issue of
17 security.

18 There are people that are there on bails
19 of up to \$500,000, very serious narcotics charges,
20 threatening the life of the President, whether a serious
21 threator not one has to be concerned about that,
22 serious bank robbery charges. And if the court feels
23 that bail should be set at a substantial amount to in-
24 sure that that individual returns to court at the
25 appointed time, I think it is incumbent upon the

jga8

Camp-direct

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1 administrators of that institution to take that into
2 account and to be aware that here is a person that
3 might not want to stay with them very long and to be
4 aware of that, and it is a complex problem but one
5 where you try to get to know the individual as quickly
6 as possible and begin to move him off the floor, let
7 him work in other areas, which is helpful to the
8 administration, at the same time being sure that those
9 that might be threatened are kept secure.

10
11 Q Dr. Camp, there is testimony in this case by
12 correctional experts that MCC practices, confinement
13 practices, are the most restrictive form of confinement
14 in the field of correction. Do you agree with that
15 opinion?

16 A I do not.

17 Q And in what way do you disagree with that
18 opinion?

19 A Well, in the facilities, particularly the
20 facilities that I've either worked in or visited,
21 there are conditions under which men live, women live,
22 both in pretrial setting and in post-conviction settings,
23 that are much more rigorous in terms of security both
24 within the housing units and also in terms of movement
25 between the housing unit and the hospital area or

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2 any other area within the facility or returning to
3 court.

4 Specifically, in the housing unit, in
5 detention, there are facilities where you spend less
6 time out of your cell, and even if you are out of your
7 cell you have less area in which to move around.
8 There is no as much open, common area to move.

9 When you are escorted from your housing unit
10 to another part of the institution, you may only go one
11 officer with one detainee as opposed to maybe one
12 officer taking three or four people in an elevator.
13 It is far more restrictive in that regard.

14 And the same holds true for post-conviction
15 facilities, not only for total facilities but also for
16 areas within a facility where men may spend three
17 months, six months, nine months or longer in a cell.
18 The only time they are out is for exercise, for showers
19 or for visits, medical trips to a hospital.

20 So that the atmosphere, both as a part of
21 the physical construction of the facility and the
22 staff-inmate relationship, certainly could never be
23 construed as being the most restrictive in the country.
24 There is just no way. Anybody that would say that
25 has not really visited and not seen correctional in-

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stitutions in this country.

That doesn't mean that everything is all right. But they just have not seen that.

It is like when people say that a prison is like a country club. In response to that I say they have either never been in a prison or they've never been in a country club, because there is no comparison. And I would use the same analogy as to this facility being the most restrictive.

Q It is stipulated, Dr. Camp, that there is no interior gym or central chapel or auditorium at MCC. Have you formed an opinion whether the absence of such facilities at MCC is in conformity with accepted correctional practice?

A Yes, I have. My opinion is this, and again I think we have to go back and take a look at the nature of the length of time individuals are confined at the MCC.

When more than half are there for less than 10 days, again when more than three-quarters are there for 30 days or less and almost 90 per cent are there for 60 days or less, you do have provisions for outside, open-air recreation. Even though I would be the first to recognize, especially after this

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very cold winter, there are times when people are not going to want to use that, I do not think that you could find very many correctional administrators that would say yes, you need to have a gym.

On the other hand, I know of very few, and I can't think of any right offhand, who would not say, that is, correctional administrators who would not say, that it would certainly be desirable to have a gymnasium. And if they had their druthers, they would want to have one. I personally would want to have one because it would be nice to have.

But where you have men that on the average are age 30 or over, approximately 10 years less than the national average for inmates, detainees confined in prison for short periods of time, I don't think it is essential. It is certainly desirable, but it is not essential.

Q Dr. Camp, I believe you indicated that you have visited the roof area, the recreation area up on the roof?

A Yes.

Q Have you formed an opinion as to whether that area is an appropriate one for outdoor recreation?

A I think it is. I would do some painting

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up there. I think it is drab in terms of coloring. I would do some things perhaps with fixing up some of the equipment. But it certainly is large enough to accommodate a physical exercise program.

Again, you know, I think it would be desirable and nice to cover one of those roof areas so that it could be used in other than nice weather. It is desirable. But based on the fact that the individuals are there for a very short period of time, I don't think it is necessary.

If I may, I would like to add here that when this facility was designed, at that time it was the late 1960s and the early 1970s, when it was finalized, detention and urban jails in this country were going through a transition.

Previously, urban jails had largely confined misdemeanor offenders, those who had been sentenced. During the middle and late '60s we began to see a reversal, a trend where, rather than being predominantly convicted misdemeanors in these jails, we had pretrial individuals, and they, of course, and agree with this, are there confined because they are not able to make that bail. And you had a whole development, especially in New York City, through the Vera Institute

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MR. MUSHLIN: I am going to object to the statistics, unless we know what the basis is for that.

THE COURT: Yes. Besides, it is getting a little repetitious, Dr. Camp. I have that picture.

Q Dr. Camp, there is evidence in this case that the schedule for roof recreation at MCC provides inmates with an opportunity to go to the roof for approximately one hour each day, seven days a week. Do you have an opinion as to whether that schedule is in conformity with accepted correctional practice?

A I do. I think it is in conformity and probably, relative to most pretrial detention facilities in the country, far exceeds what is the common practice.

Q There is further evidence in this case that except on certain special occasions and within special units, the designated cadre, that inmates receive their visits in the visiting room and are not permitted to conduct their visits in the housing unit.

Have you formed an opinion as to the suitability of this visiting procedure?

A It is my opinion that visits should occur in an area separate and distinct from the living area

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or the housing area. I think that there would be more privacy in an area that is solely designated for visiting as opposed to an area where all types of living is going on, people going to showers, people coming on and off the floor, people watching television.

At the same time, you know, I certainly think that it is good, common correctional practice at specific times to permit visitors to come onto the floors to see where their relatives or their friends are living, and that is done throughout the country.

But I think, because of the fact that you have to be concerned about the introduction, the possible introduction, of contraband, that it would be very difficult to do on a regular basis.

But it is done, whether it is annually or semiannually, throughout the country in post-sentence facilities. I'm not specifically aware that it is being done in large urban detention facilities. But I certainly think that on an annual basis it certainly could be done.

Q It is further stipulated that after a visit, a strip search is conducted of inmates. Do you have an opinion as to whether the use of strip searches after visits is in conformity with accepted correctional

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2 practice. It is if, one, the visits are contact
3 visits, I mean where there is direct contact between
4 the visitor and the detainee or inmate, and also if it
5 is done in private as opposed to in front of every-
6 body, and also taking into consideration the fact that
7 you have people in a facility, whether it is this one
8 or another one, that might wish to introduce contraband,
9 if you have people that are involved in narctoics
10 or serious offenses that might want to introduce some-
11 thing to aid them in an escape.

12 I think it is a precaution that needs to
13 be taken.

14 Q Dr. Camp --

15 THE COURT: Do you include in a strip
16 search an anal inspection and inspection of the
17 genitals? Was that embraced within your answer?

18 THE WITNESS: Well, I'll try to phrase
19 it diplomatically.

20 THE COURT: No. I can listen to every-
21 thing. It is all right.

22 THE WITNESS: A visual as opposed to any
23 other type, just a visual inspection.

24 THE COURT: And it is your expert judgment
25 that that is necessary following contact visits in

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guarded visiting rooms?

THE WITNESS: Yes, because, your Honor, I don't think it is possible to watch every single person that closely so that contraband could not be passed.

THE COURT: Is it your experience that a fully-dressed inmate in a visiting room could feasibly or with any frequency secrete contraband in the recum or something like that?

THE WITNESS: Absolutely. I know of cases where it has happened. It does not stop, your Honor, and would not stop somebody swallowing something, whether it passed in a balloon and swallowed something in a balloon and then passing it later, when they get back in the unit.

THE COURT: What kind of search would you recommend for that?

THE WITNESS: I don't think there is a search. I think that's where observation needs to be as good as possible. And if you do find that later something has been brought in that way, then restrictions for that person on their visiting have to be put into place, where they have not, you know, respected the fact that contact visits are allowed they have abused that privilege and therefore noncontact visits, at

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least for a period of time, might be instituted. Or
that person who visited that day would no longer
be permitted to visit.

THE COURT: When you suggest making
discriminations among people, do you have any view on
whether that might be done generally in advance without
regard to discovery of infractions?

THE WITNESS: I don't think that that should
be done without having something actually occurring.

THE COURT: Well, do you think there might
be a class of inmates, based on the nature of the crime
or the person, for whom the anal inspections would not
be necessary?

THE WITNESS: I think that is the case,
although we know from experience that if you really
want to get something in a prison, you will not be the
person who will bring it in, you will have somebody
else bring it in for you through the visiting room who
the administration is less likely to see as desiring
to have that item. So you use somebody else to
get that in.

I guess that's the best way I could respond
to it.

But certainly there are some people that

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are far less likely to bring things in. But they might be induced, pressured, subtly or not so subtly, to do so.

But again I would say that if somebody wants to get something in, whether it is this facility or somewhere else, they can find a way. I have used the analogy you can bring in a Sherman tank piece by piece. I think it is amazing that more contraband does not come in than does.

Q Dr. Camp, do you have an opinion as to whether it is in conformity with accepted correctional practice to assign male correctional officers to female housing units and female correctional officers to male housing units?

A I think it is a great idea. I think it is something that should have occurred a long time ago in corrections. I think one of the objectives in corrections is to normalize as much as possible the setting in a correctional institution as opposed to a setting in corrections of the past.

I think a certain amount of privacy needs to be assured. But one of the problems, one of the difficulties that people have in general but in particular it seems as though people that end up in

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2 correctional facilities or detention facilities have,
3 is relating to people of the opposite sex other than
4 as sex objects, and I think that for a female detainee
5 or prisoner to work with a male correctional officer
6 and vice versa in a different way is a sound practice,
7 at least for normalization, and I think it just makes
8 a heck of a lot of sense, and it is being done not only
9 here but in other facilities throughout the countries.

10 We have co-correctional facilities from
11 Massachusetts to California to Texas to Missouri, and
12 in every case where you have men and women together
13 there tends to be a more relaxed atmosphere, a more
14 relaxed setting. I think it is the way to go.

15 Q It is stipulated here that inmates are
16 required to wear uniforms during the time that they
17 are in the institution. Do you have an opinion as
18 to whether that is in conformity with accepted
19 correctional practice?

20 A That is a much debated issue, and there are
21 pros and cons on both sides, in particular in detention
22 facilities.

23 When I worked with the New York City
24 Department of Corrections, all of the detainees wore
25 their own clothes, and that basically was because the

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2 City Department of Corrections could not afford to supply
3 clothing for them. Their budget office would not
4 provide the money for it.

5 Consequently, many of the men dressed very,
6 very poorly. You know, they would come in off the
7 streets with pretty dirty clothes, not in all cases
8 but in many cases, and it was our desire to supply
9 clothing for them.

10 I think that where you have a rapid turnover
11 in your population, and I won't belabor it, but where you
12 have a rapid turnover in your population, you need to
13 be able to quickly identify staff from the detainees.

14 As to the manner of doing it, the uniforms
15 that are used there I don't think are degrading.
16 Certainly I would rather wear the clothes I have on
17 than wear that uniform, but I don't find it degrading.
18 I wore one --

19 Q How long did you wear that uniform?

20 A I wore it for about 10 to 12 hours, and
21 I did not find it degrading. I wore it in front of
22 other people. They might have chuckled a little bit,
23 but they weren't laughing at me, mainly because
24 I think they were smaller than I.

25 But it was not uncomfortable. And in

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particular I thought the uniforms that the women wore were even better than the ones the men wore. They seemed to be better tailored, better fitting, form-fitting. And I just don't have a problem with it based upon the rapid turnover and it makes it easier to keep them clean and to keep up with the sanitation in the facility.

Q Are there security aspects that go along with that?

A Well, I think I mentioned or meant to that it is easier to identify people, and, again, where you have people who are there for their own protection, where their lives have been threatened, I think you do need to have that.

As I said, there are pros and cons to that and one could argue the other way that, you know, it gives one a sense of individuality by being able to wear their own clothes. I certainly wouldn't argue with that. And it is really a trade-off between one and the other. But, again, people are there for such short periods of time. It is difficult to know them. You know, I would give it slightly the edge to having the uniforms.

Q It is stipulated that for formal unit

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2 searches, room searches, inmates are not generally
3 permitted to watch the search of their rooms and that
4 on other occasions, during less formal kinds of
5 searches, they be permitted to do so.

6 Do you have an opinion as to whether that
7 policy is in conformity with accepted correctional
8 practice?

9 A Yes. I think basically it depends the
10 type of search and the reasons for the search.

11 In many instances, if the detainee or the
12 inmate is present, is in the area, it is certainly
13 desirable for him to be there and to observe what is
14 being searched, what might be being picked up as
15 contraband, what is being noted as contraband.

16 On the other hand, it might be, because
17 of a tip that you have or because you know the nature
18 and personality of the individual, it might be very
19 sound not to have that individual present, because it
20 might be a situation that could become explosive, it
21 might antagonize him. It would be better to do the
22 search without him there and then come back in
23 private rather than out in public in front of the
24 other inmates and go over what was taken.

25 I observed a search on one of the floors

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2 and I thought it was done very well in terms of the
3 rooms were put back in order, the material was noted.
4 They searched eight rooms. Two of the inmates,
5 detainees, happened to be present. They observed it.
6 And everything was put back in good order.

7 Certainly the people who were searching
8 knew I was there. I don't think that they knew that
9 I was there to testify in this case and were putting
10 on a show for me. And I thought it was done --
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Camp - direct

MR. MUSHLIN: I object to what he thought.

THE COURT: All right.

A It was done very professionally.

Q Dr. Camp, do you have an opinion on whether it is in conformity with accepted correctional practice to assign one correctional officer to cover one floor consisting of two housing units during the night lock-in period?

A Yes, I do. I think that is consistent with correctional practices throughout the country. When people are locked in you don't have as much need for staff, whether custodial or other staff, than when they are out.

I do think that there should be staff available during that time when people are locked in that can float or move at random from one area to another to check with the staff to make sure they are making their rounds, to make sure staff is all right and problems haven't occurred.

But insofar as a fixed position, I don't think that is necessarily needed and it certainly is not done in other correctional facilities and most of the problems occur in the correctional institution when people are out of their cells as opposed to when they are in their

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find that. What is important from what I saw and observed was that where there things that were not as good as they should be, that action was taken to correct it, which indicates to me that staff desires not only to improve but in fact is trying to stay on top but you -- I would say the types of sanitation problems that I saw were clean dirt as opposed to dirty dirt, which means not accumulations over long periods of time of neglect in sanitation techniques but more in the daily build up of sanitation problems that are taken care of on a daily basis.

Q Do you have an opinion as to whether it is in conformity with accepted correctional practice to house inmates under mental observation in a non-hospital unit?

A My opinion on that is that the decision basically should be made by physicians or psychiatrists and if physicians or psychiatrists think that an individual should be in a hospital unit within a facility, that is where they should be.

If the physician or psychiatrist thinks that the person should be transferred to a hospital or a psychiatric hospital, that is where they should be.

If they think they should be housed in a non-hospital setting, I think that is their judgment and you

should go with that.

In the absence of a medical person I think that if an administrator has any doubt, he should place that person in a hospital setting. I know in fact that is done throughout the country, correctional administrators are very sensitive to this and are supercautious.

If they do have somebody in that category that they are not sure they are going to take extra precautions. Even in psychiatric hospital you don't have a psychiatrist present all the time, you rely upon lay people who have been trained or who have innate sensitivity along with training to observe and then report any irregularities. I think that makes good sense.

MR. CORSI: May I have a moment, your Honor?

(Pause.)

Q Dr. Camp, what is the average age of the incarcerated population throughout the country?

A The average on admission ranges between 22 and 23 years of age.

MR. CORSI: Thank you, Doctor, I have nothing further.

MR. MUSHLIN: Your Honor, yesterday at four o'clock we were informed for the first time that Dr. Camp had testified in the Holt and the other case and we were

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2 Association standards in their manual of correctional
3 standards that reflects the proper correctional
4 practice?

5 A Some I think are far too conservative and --
6 some I do and some I don't.

7 Q But do you agree with the standard which
8 provides one toilet for each eight inmates and one shower
9 for each 15?

10 A Again, it depends upon the conditions under
11 which the person is confined.

12 If a person is able to move about a facility
13 and has access to more than just that one toilet, then
14 you might be able to get by with that.

15 If you are confined to one area, one toilet
16 might not be --

17 Q Assume you were confined to one area where
18 there is less than one toilet for each eight inmates --
19 more than eight inmates for one toilet, let us assume
20 20 inmates for one toilet.

21 Assume that to be true and assume there is
22 no movement out of the area do you have an opinion as to
23 whether or not that is acceptable practice?

24 A I would say if a person were confined 23 or
25 24 hours or a substantial portion of the day and night in

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2 an area and was not permitted to remove himself from that,
3 I think that would be too few toilets, certainly.

4 But if they are permitted to move out of that
5 area --

6 Q My assumption was they weren't.

7 A If they were locked in a room with 19 other
8 people and one toilet, I wouldn't think that would be
9 sufficient.

10 Q How about one shower?

11 A One shower? Two might be better. You might
12 get by with one but only if you were locked up in that
13 area and not able to move out.

14 Q Do you agree that one of the major problems
15 facing correction facilities in America is the problem
16 of the overcrowding of the facility?

17 A Absolutely.

18 Q Wasn't the overcrowding a problem in Missouri?

19 A Absolutely.

20 Q Do you think the problem of overcrowding that
21 causes an administration to use areas not designed for
22 housing and has to use a hobby shop for a dormitory
23 because in Missouri --

24 A That is not true.

25 Q That is not true? Let me ask you this --

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2 A I think I know what you are referring to and
3 it was not a hobby shop, it was a chess room and a game
4 room used temporarily for a housing area.

5 Q Do you think that is appropriate?

6 A It certainly is not desirable but certainly
7 is better than not providing housing at all or for people
8 to sleep outside.

9 Q Now, did you see the balcony areas at the MCC?

10 A Ye.

11 Q Do you have an opinion as to whether or not
12 they are an acceptable place to house people?

13 MR. CORSI: Objection, your Honor, outside
14 the scope of direct.

15 THE COURT: Well, it is all right. I will
16 allow it.

17 A Will you repeat the question?

18 Q The balcony areas, the housing units, each
19 housing unit has a balcony?

20 A I understand.

21 Q Do you have an opinion as to whether or not
22 this is an acceptable place to house people?

23 A My opinion on that is that it is not desirable
24 and should not be used on a regular basis.

25 However, I do understand that in the past they

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2 have been used to put people up overnight when there is
3 no other room and I don't advocate this but if you have
4 people there that come in late at night or the afternoon
5 and have to find a place, I think it is something that
6 can be done. I don't advocate it and I don't know any
7 correctional administrator that would like to do it.

8 Q Is it fair to say that a correctional adminis-
9 trator would consider that an undesirable thing to
10 happen?

11 A It is not desirable, that is correct.

12 Q Let me ask you, does overcrowding -- you had
13 overcrowding in the facility in Missouri?

14 A Yes, we did.

15 Q Does overcrowding -- isn't it true that over-
16 crowding of the facility not only affects the housing
17 of people but affects many other aspects of the facility,
18 to deliver services?

19 A It certainly can.

20 Q You were also the Assistant Commissioner of
21 the Department of Corrections in New York City, weren't
22 you?

23 A That is correct.

24 Q Was there overcrowding in New York City at
25 that time?

1 of staff either being beefed up or gaining additional
2 resources to handle that additional load which, of course,
3 the service was not designed to handle. Any correctional
4 institution has a certain amount of leeway, give and take.
5 It may be able to handle 10 percent more or 20 percent
6 more but it depends upon the facility. But certainly
7 overcrowding will have an effect.

8
9 Q Would it be fair to say in your experience
10 in New York one of the major problems of the operation in
11 New York City's prison system was overcrowding?

12 MR. CORSI: Objection, relevance.

13 THE COURT: Sustained.

14 Q Now, do you know the population of the MCC
15 yesterday, the census?

16 A I don't know the exact number. I believe
17 somewhere around 500.

18 Q Do you know the capacity of the institution?

19 A I don't know what you mean by capacity.

20 Q The rated capacity, the design capacity of
21 the institution.

22 A I don't know.

23 Q Do you know whether it is 500 or --

24 A It is roughly 500.

25 Q Do you know the design capacity for 11 South?

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A I do.

Q Is it fair to say that you consider it important for an inmate to feel relatively secure in their physical cells from attacks by other inmates or guards?

A I do.

Q A feeling of physical security?

A Yes, indeed, as much as possible.

Q Let me ask you a hypothetical question.

If you were running an institution and you have a classification system set up so that you classified people medium security, minimum security and maximum security and you had available to you both single, private rooms on the one hand and dormitory or squad rooms such as you saw at the MCC on the other hand and had two categories of people, one maximum security and one minimum security, who would you put in the dormitories?

A I think the obvious one that appears is very apparent. That is that those who were in a less secure category would be placed in the dormitory as opposed to the room.

However, it may be that that answer is not the only one on that. There are throughout the country close security institutions which I guess in this case

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Camp - cross

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2 the term maximum security is used, but the term close
3 security in a prison like Atlanta or Leavenworth or
4 Lewisburg and so forth, they are designated as close custody
5 but where there are men who live in dormitories. So that
6 custody is not just a matter of the type of housing that
7 a person resides in. It is an important consideration
8 but not the only one.

9 Q Your answer was that you would put them,
10 the medium security people in a dormitory, was that your
11 answer?

12 A My answer was that --

13 Q Just yes or no really.

14 A No, it is not as simple as that.

15 Q I want to know what your answer was.

16 THE COURT: Wait a second, that is not useful.
17 There is no jury here. I think that was answered and
18 you should go on to some other question.

19 Q When you were Assistant Commissioner in New
20 York City, wasn't there a demand made that the City
21 provide a law library for the New York City jails?

22 MR. CORSI: Objection, relevance.

23 THE COURT: Sustained.

24 Q Are you familiar with the New York City jails,
25 the Queens House of Detention and the Brooklyn House of

1 detention?

2 A From my past experience.

3 Q And the Bronx House of Detention and Rikers
4 Island?

5 A Yes.

6 Q Do those facilities have indoor gymns in
7 them that you just mentioned?

8 A Yes.

9 Q Used by the population?

10 A To what degree they are being used I don't
11 know.

12 Q Isn't it true that those facilities have a
13 chapel and an auditorium?

14 A All of them but most of them have a combination
15 chapel, auditorium, that is correct.

16 Q Isn't it also true that all have a law library
17 and classroom space?

18 A They all to the best of my knowledge have
19 small law libraries, and classroom space -- I'm trying to
20 reflect -- yes, they do.

21 Q One other thing about the balacony area.
22 Isn't it true that that area is used at the
23 MCC for programming?

24 A I have seen it used for that.

1 Q I would assume you would conclude that having
2 people put in cots for sleeping could interfere with
3 programming in that area?
4

5 A If they are going on at the same time, quite
6 obviously.

7 Q Your comments about many aspects on direct
8 examination, you commented that your opinion was in large
9 part based upon the length of confinement of people at
10 the MCC, is that correct?

11 A Yes.

12 Q In regard to a greater length of confinement,
13 the longer length of stay in your judgment, other
14 facilities might be needed to bring that --

15 A Yes, indeed.

16 Q People staying longer than what you testified
17 to, it would be your view that the MCC might be
18 inadequate?

19 A That is correct.

20 Q Is it true -- let me see if I understand.
21 I gather what you have said --

22 THE COURT: Look, whatever he said on direct
23 examination I heard and it is in the record. I don't
24 think it is necessary for you to repeat it. Go to some-
25 thing else.

Q Do you have a view as to whether or not it would be proper -- you talked about women being correction officers in male areas and male correction officers in women areas.

Do you have a view as to whether or not it would be proper for a woman correction officer entering a male washroom unannounced?

A Unannounced? I think it would be appropriate to knock. I would like to be able to say -- I am at a point where I think it would be appropriate to knock, yes.

Q You testified that it was your view that the level of tension at the MCC was low and that it appeared to be a relaxed place?

A I did.

Q Would your opinion be influenced in any way on that if I tell you that there was a disturbance on 11 South less than two weeks ago where there was a refusal by inmates to lock in which required force to secure the lock-in? Would that be an indication of the level of tension in a facility?

A It would be an indication. I think that incident bears out substantially my position that in fact there was really a low level of degree of tension because

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Camp - cross

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on March 17 when I visited that facility at night, I spent considerable time on 11 South, the area where that disturbance did occur the previous Sunday.

If somebody had not told me prior to going up there there had been a disturbance, I would not know there had been because the relaxed atmosphere on that floor that night was as if the incident had not happened.

I am sure that it was in the back of everybody's mind, I don't mean to dismiss it but in terms of the rapping going on, sitting down and the discussion, it is not to make light of it, I am not making light because undoubtedly at the time it was serious. Obviously the incident occurred and some of the men joked about it. On another floor I met another individual who talked to one of the officers about it and joked about it saying how funny he looked in a gas mask and they laughed back and forth about it.

This shows to me that even though there had been a serious incident, I don't know all the details but what I heard, the staff was able to bring the institution back to normal routine very quickly and I thought it was a tremendous credit to the staff and their ability to get along with people and for the men to recognize that if there was a problem, the staff might

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Camp - cross

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not have acted as they thought best but they were willing
to admit a mistake and try to correct it and go on from
there. I thought it was a very positive sign.

(Continued on next page.)

jgal

Camp-cross

Q It is true, isn't it, that if you have an indoor recreation facility in the winter montns, that facility is going to be more popular than a roof area?

A Absolutely.

Q Okay. And it is true, also, isn't it, that when we talk about recreation in a correctional facility, we talk about the importance not just to physical muscle toning to individuals but also group sports and activities, such as basketball and volleyball and whatnot?

A Yes. Recreation is not only the physical types of things, of basketball, volleyball, but also non-really-physical types of activity, card playing and whatever else it might be: leisuretime activity.

Q Do you agree that it is also important, in a correctional facility for recreation, for people just to get out and stretch their legs, get some fresh air?

A Yes, I do.

Q And if it can be done in a natural setting, that is beneficial, isn't it?

A What is that?

Q If it can be done in a natural setting, a parklike setting?

jqa6

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2 A Yes, I did.

3 Q Did you observe visiting on 11 South?

4 A I did.

5 Q Did you observe visiting when up to 24 or
6 25 people were in that visiting room?

7 A Approximately, yes, I did.

8 Q All right. Do you have a conclusion as
9 to whether or not that room is adequate for that number
10 of people?

11 A I thought it was too small.

12 Q It is true, isn't it, from your observations
13 of inmates, that when an inmate is visiting with his
14 family or friends, other inmates aren't likely to in-
15 terfere with that, are they?

16 A I don't understand what you mean by "inter-
17 fere."

18 Q Disturb.

19 A Bother them?

20 Q Yes.

21 A Not likely, no.

22 Q Now, regarding the wearing of uniforms at
23 the MCC, it is not your testimony, is it, that those
24 uniforms are absolutely indispensable for the security
25 of that institution?

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A Absolutely indispensable?

Q Yes.

A I could not say that it was absolutely indispensable in the absolute sense, that's correct.

Q It is true, isn't it, that there is a difference between wearing that uniform for the entire stay one has at the MCC and wearing that uniform for 12 hours, as you did?

A Certainly.

Q That is obvious, isn't it?

A Absolutely.

Q Now, personal property that an inmate has while he is incarcerated is quite important to him, isn't it?

MR. CORSI: Object, your Honor.

MR. MUSHLIN: Your Honor, he talked about searches and I think that's directly relevant.

THE COURT: What is the ground of your objection?

MR. CORSI: We --

THE COURT: He could have said yes in the time it took you to get up. But what is the ground?

MR. CORSI: Beyond the scope of direct.

THE COURT: Oh, no. Overruled.

jga3

Camp-cross

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A Would you repeat the question?

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Q Yes, sure.

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It is true, isn't it, that personal property that an inmate possesses while he is in detention has importance to him?

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A Yes.

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Q And probably a heightened importance to him from what people in the general population feel about their property?

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A You mean outside the prison?

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Q Yes.

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A Equally so.

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Q Now, in your experience in the federal system and in New York City and in Missouri, did it ever occur that property that was taken from an inmate on a search was improperly seized, that is to say, that property that a guard thought when he seized it, maybe in good faith, was contraband that later turned out was not contraband?

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A Yes.

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Q Do you feel it is a proper practice to destroy property that is seized from an inmate on a search after it has been seized without giving an inmate an opportunity to contest whether or not it is

1 jga

2 contraband?

3 A No, I do not.

4 Q Is it important while in detention that an
5 inmate understand the rules and the procedures of the
6 institution and that he understand what programs are
7 available to him?

8 A Yes, it is.

9 Q If I were to tell you, Dr. Camp, that there
10 have been about 20,000 admissions every year at the
11 MCC and of those admissions approximately 15 per cent
12 don't speak English but speak Spanish, do you feel
13 that notices about the rules of the institution and
14 about programs that the institution has should be posted
15 on the bulletin boards in Spanish at the MCC?

16 MR. CORSI: Object, your Honor. I don't
17 know what the ground for the assumption in the figures is.

18 THE COURT: Well, you'll be able to argue
19 that later. If they are incorrect, you will call
20 that to my attention.

21 You may answer, doctor.

22 A Your question is, if 15 per cent of the
23 people in the institution speak Spanish, should
24 notices be written in Spanish as well as English?

25 Q Yes.

jqa

Camp-cross

2424

eyeshot of the other unit but also not being able to hear anything that is happening in the other unit?

A Even if there were one person each -- in each of the units, and there was two on each floor, as I recall the way the place is laid out it would be impossible to see everything that is going on if the doors are shut and the people are locked in their rooms?

Q I would like you to assume, Dr. Camp, that if an officer is on one of the units, although he may not be able to see everything, he could hear what was going on on that unit. I would like you also now to assume that if he is on another unit, he cannot hear what is going on on the unit that he is not in on that floor.

Now, assuming that to be true, is it acceptable, in your view, to have a guard in that other unit leaving one unit on the floor at all times unattended to and out of not only eye observation but also out of ear observation?

A My opinion on that would be that if that officer, that one person, did not regularly and consistently move between the two floors, between the two areas, it would be inappropriate. But I think that it is not inappropriate if he is continually moving and

jga

Camp-cross

2425

checking. The areas are not that far apart.

I agree with you that certainly it is more difficult to hear. But if that person is circulating and moving and checking, that adequate security and control -- not control, but adequate security and checks can be made.

Q How often should they be made?

A I think the officer who might be working from 11 o'clock on, 11, 12 or whenever it is that a man is locked in or whenever he or she comes out, that he be moving pretty much all the time.

You know, it takes, to walk through from 7 North to 7 South and around all the way around, five to ten minutes, maybe fifteen minutes on the outside.

Q So you are saying that every fifteen minutes he should be moving from one unit to another, is that right?

A Yes. And as I also said, I think it appropriate, whether at this facility or at another facility, to have a roving patrol, so that you have an individual who would not be assigned to one particular unit or two particular units but who is continually moving throughout the facility, one to make sure that the officer is doing what he is supposed to be doing but

A 1437

Camp-redirect

2430

Q

A I did.

Q And what was their reaction to that inci-

dent?

A Their reaction to it was that more had been made out of it than there really was.

MR. MUSHLIN: I am going to object. I think that really is hearsay.

THE COURT: Yes. Sustained.

Q Dr. Camp, are there problems associated with providing employment for pretrial detainees in an institution?

A I'm not sure if I know what you mean by "problems."

Q Are there problems that the administration would face in providing employment for its pretrial population?

A I think the problems are in terms of getting to know the person and maintaining the security of the facility. And when you have a population that is highly mobile, those are problems.

Q Dr. Camp, your opinion with respect to locking women in the units, the rooms on 5 South, is your opinion affected by a regular schedule of checking on those

1 jga

2 rooms to see if the individual in those rooms needs
3 to use the bathroom facilities?

4 MR. MUSHLIN: I think it is leading, your
5 Honor.

6 THE COURT: No. I'll allow it.

7 A I answered the question assuming that a
8 person was confined in that room for 23 hours, whether
9 it was one day or for three days, and was only let out
10 for one hour at a time. And I stand by my answer
11 on that.

12 Q But if there is a schedule for checking as
13 to whether or not that person needs to use the bathroom,
14 would that affect your opinion?

15 A It would.

16 Q And in what way?

17 A I think that it would have to be frequent
18 and regular checks to insure that that person, if they
19 had to go to the bathroom or there was some other
20 problems, were gotten to.

21 Q How often would those checks have to occur?

22 A That would vary with the individual. It
23 could be anywhere from every 30 minutes to every two
24 hours, depending upon the needs of that individual.

25 MR. CORSI: Thank you, Dr. Camp.

jga

Camp-recross

2432

MR. MUSHLIN: Just one.

RECROSS EXAMINATION

BY MR. MUSHLIN:

Q Isn't it true that correctional administrators consider it important not to put an inmate in a situation of having to ask a guard to go to the bathroom and therefore they put toilet facilities in segregation units?

A That is correct.

Q And isn't that done just throughout the country?

A Isn't what done throughout the country?

Q Aren't there toilets -- let's take Missouri.

A Are you talking about segregation units?
Aren't their toilets?

Q Yes.

A Right.

Q In the cells. So if you had in your system in Missouri --

THE COURT: You've gotten an answer that covers the whole country, which may be includes Missouri.

MR. MUSHLIN: Fine.

THE COURT: All right. Let's take five

1 jga
2 minutes.

3 (Recess.)

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5 (Continued on next page.)
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MR. SHAFFER: Miss Cardamone.

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ELISSA CARDAMONE, called as a witness
by the respondent, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. SCHAFFER:

Q Miss Cardamone, are you currently employed?

A Yes, I am.

THE COURT: You know by now that Miss Cardamone
and I are old friends.

Q Are you a correctional officer at the MCC?

A That is correct.

Q How long have you served in that capacity?

A Almost four months.

Q What units have you worked on?

A Unit 3 and Unit 5.

Q Miss Cardamone, in the course of your duties
as a correctional officer at the MCC have you had occasion
to conduct strip searches of female inmates after visits?

A Yes, I have.

Q In the course of those strip searches have
you discovered contraband?

A Yes.

rs2

Cardamone - direct

Q Could you relate any instance or instances in which that occurred?

A I was strip searching a female and I noticed in t he vaginal orifice of the female inmate a reddish object.

When it was removed and she subsequently removed it herself, it was discovered to be a red balloon and in the balloon was a packet of heroin, a nickel's worth.

Q Because of your duties as a correctional officer on Unit 5, have you had occasion to have a woman locked in?

THE COURT: How long have you worked there, did you say?

THE WITNESS: Almost four months, three and three-quarters.

Q Was this the only instance where you discovered contraband?

A I found contraband lots of places, lots of times, when you least expect it, it is just there.

On one occasion I saw a guy toss a small brown paper bag which I intercepted and it was filled with marijuana.

Q Was that in a visiting room?

rs3

Cardamone - direct

2436

A This was in a range, tossed it to a general purpose area. It was being tossed to another inmate and as we were approaching the range for the purposes of conducting a search for contraband and as we were entering on the range going up the steps, this man stepped out of the room and tossed the bag to another inmate and I just did one of those jobs (indicating).

Q You caught it?

A Yes.

Q Can you recall any other instances in which you discovered drugs?

A I found some coke once in an aluminum foil in an inmate's room; marijuana here and there.

Once I found one seed, sometimes you find a lot, sometimes a little.

Sometimes you find a dusty residue from it. Once I found a dusty residue of coke, binoculars.

Q Miss Cardamone, in connection with your work on Unit 5 have you had occasion when an inmate was locked in her room for administrative detention?

A Yes.

Q When this occurs what are your duties in that connection with that inmate?

A Well, first of all, the officer is given a

1 chart which you have to fill in, just as a watchman with
2 a punch and a key when he makes his rounds.

3
4 You have the chart that you have to fill in
5 when you do the required things that you do for a woman
6 locked in a room.

7 On Unit 5 and on all units you check people
8 locked in once an hour to see if they are okay and need
9 anything and you fill it in. Also they are given time
10 for exercise and a shower and phone calls, things like
11 that. They are given one hour a day.

12 Specifically on 5 you are faced with the
13 problem or situation there is no commode in the room so
14 when you make your hourly checks you simply ask the woman
15 do you have to use the lavatory and some people consider
16 it an advantage because it is your prerogative to get up
17 and go once an hour if you want to, to get up and leave
18 your room once an hour if you want to do it that way.

19 Some people just don't care, they say no and
20 stay in their room. But it is sort of like an extra
21 privilege.

22 Q When a woman doesn't want to use the lavatory
23 are they permitted out to use it?

24 A Yes, because they have to get out of her room
25 and -- yes, of course, I let her out, yes.

A 1445

rs5

Cardamone - direct

2438

Q Have you worked on any unit besides 3 and 5?

A Unit 2 just once or twice. Unit 2 is the Honor unit.

Q Have You encountered any complaints, Miss Cardamone, concerning your performing your duties on male units?

A No.

Q In the course of performing your duties do you hand out supplies to inmates who need extra items for personal hygiene or other such items?

A Yes.

Q Where do you obtain those supplies?

A From a closet on the unit.

Q In your experience at the MCC, have you generally found that the supplies were available in the closet?

A Well, they are and if they are not there you can get them unless you are on late watch when people in other departments that feed your closet are closed. Essentially if they are not in the closet you have access.

Q Where do you obtain them from?

A Well, sometimes R & D is a handy place because they have a bigger selection. They have something of

everything and it is handy.

If not, you can go direct to the department, right to the laundry area in the basement. But you go to R & D because it is closer but you have another option.

MR. SCHAFFER: I have no questions.

CROSS EXAMINATION

BY MR. YOUNG:

Q Miss Cardamone, in your direct examination you described you provided supplies. Could you tell me whether the women in the unit that you supervise are issued clean ironed jump suits once a week?

A The women iron them themselves. They clean them themselves too.

They can send them down to the laundry but since we have a washing machine on the unit lots of people like to clean their jump suits so they get the same one back because they take them in. They don't put them out to get washed.

Q Do the women who do jobs and get their uniforms dirty, do they have the responsibility of cleaning them themselves?

A If you work, generally in the kitchen you are allowed more than three jump suits.

Again, you can turn them in to the institutional

1 wash or wash them on the unit. It depends on if you
2 personalize your jump suit or not.

3 Q Concerning your issuing of supplies such as
4 bed linens, have you ever encountered a situation during
5 your tour of duty at the MCC where you hadn't enough bed
6 linen to provide it to everybody on a weekly basis?

7 A I think once I didn't have a blanket and
8 R & D didn't have a blanket so you might hunt a bit.

9 Sometimes everyone washes their blanket at
10 once and the laundry doesn't get them back or the man on
11 R & D doesn't want to -- he expects a bus so he doesn't
12 want to give them out and call me back later he says.
13 People get moody.

14 Q You testified as to strip searches and your
15 discovery of marijuana in the vagina on one occasion.

16 Have you ever on any other occasions discovered
17 contraband hidden in the vagina or the anal area?

18 A Yes. I got beat for that one. This woman
19 had something in her and was giving me a hard time, sort
20 of scaring me because I am like meek to be doing this
21 sometimes but -- so that I locked her in the search room
22 and called for help, for assistance.

23 And as I was doing that, I was keying the
24 door because the count was about to start and to see if
25

rs8

someone was there and my keys got stuck in the door.

Now, I was faced with do I go over, as this was happening I was with my key stuck in the door and I see this thing coming from under the door of the room and the woman suspect has something in her.

Now, I am stuck with the problem do I run to the door and pick up what is being passed out from under the door to another inmate or do I leave the institution keys hanging in the door that is jammed in? I don't know what to do.

I figured if I get beat I will get yelled at but if I mess up with the keys I would get fired so I stayed with the keys.

Whatever it was, she evidently took it out and passed it under the door and someone else got it. Later in the evening they all wanted Malox so it turned out okay.

Q You never actually determined what it was?

A No, I just know it was something that needs to be passed under a door.

Q At the time of that predicament you described was another officer nearby who could have assisted you in regard to the keys and this room?

A No, because the range I was on didn't have a

A 1449

rs9

Cardamone - cross

2442

phone on it. I didn't have a walkie-talkie.

Q Were you the only officer stationed there at that time?

A Yes, at that time.

Q By the way, you testified as to finding grass and coke. I assume they weren't in the vagina or the anal areas except in the instance you described?

A No.

Q Do you have any knowledge as to where those items come from?

A No.

Q In other words, you don't know how the inmates had them?

A Sometimes if you find one, sometimes saving a pill, you could get the medicine and save them up, you speculate but --

Q We just want your personal knowledge on these things.

The inmate that was tossing the bag of grass to somebody else, approximately what size was that bag?

A It was a size bag that would hold an apple and a big navel orange from Florida.

Q I assume if it was that large it was not secreted in the vagina or rectal areas of an individual?

rs10

Cardamone - cross

2443

A Yes.

MR. SCHAFFER: Objection. I don't know what the relevance of that question is.

A I could Tell you about packages that I found that probably did come from -- for example --

Q I just wanted to know about that grass.

If the Government feels it is relevant or the Court, they will ask about it.

A That is why they changed the gloves in the kitchen because they were cutting the fingers off them and sticking them somewhere.

Q Now, I believe you testified that there is a chart that is kept for administrative detention?

A Yes, a page-type.

Q Would it be possible, say for an officer on night duty, not yourself but some other officer to say, take a nap or something rather than actually going every half hour or hour and checking as opposed to --

MR. SCHAFFER: Objection.

THE COURT: On what ground?

MR. SCHAFFER: It is argumentative and assuming something that is not in evidence.

THE COURT: No, he asked would it be possible.

Q Would that be possible, an unethical officer

1 rsll
2 didn't want to do the duty he was required to do?

3 A Sure that is possible.

4 Q You testified that when you guard the women's
5 unit at night you go around on an hourly basis if they
6 are locked up?

7 A You have to do it every hour.

8 Q When you go to the women's room for this hourly
9 check, if she is sleeping do you wake her up to ask her
10 if she wants to go to the bathroom or not?

11 A Well, I sort of say it low so if she is asleep
12 but has in the back of her mind sometimes you go to sleep
13 because -- but you know you have to get up soon and in
14 that kind of a state I say it low enough for her to hear
15 me if she has to go but not loud enough to wake her
16 up and disturb her.

17 Q In other words if that woman did have to go
18 the bathroom she would have to stay awake until the next
19 time you came around in order to be released?

20 A It has been my experience I usually know when
21 someone has to go to the bathroom. I don't wait to
22 see if the big hand is on 12 because they can talk,
23 sometimes they sit in a chair by the door and talk and
24 someone comes up and says, "Hey, Cardamone, so-and-so
25 has to go to the bathroom."

I suppose.

Q Have you ever been the only female officer in a male unit?

A Yes.

Q Have you ever entered a male inmate's room while he was in the state of undress or using the toilet in the room?

A Completely nude? No.

Q Even partially?

A Well, I see guys in boxer shorts all the time.

Q Do you usually knock on the door when a person is in the bathroom or in a private room?

A I knock on the door, every door even if it is open.

MR. YOUNG: I have no further questions.

THE COURT: You mentioned Unit 5 South.

Are the women locked in at night?

THE WITNESS: No, they are not.

THE COURT: Anything else?

MR. SCHAFFER: Nothing further.

THE COURT: Thank you.

(Witness excused.)

MR. SCHAFFER: Karen Amy.

rs15

Amy - direct

2448

Q How long did you work in that capacity before getting your promotion?

A Seven months.

Q Miss Amy, what is your educational background?

A I have an Assistant Associate of Arts degree in law enforcement, a Bachelor of Arts in law enforcement from Kent State, Ohio and a Master's in correction from Kent State.

Q Could you briefly describe what your duties and responsibilities are as correction officer?

A It is really depending on which post I was stationed at.

If I was assigned to a unit I have the responsibility for maintaining the sanitation of the unit, the orderly day-to-day functioning, medication, room inspection, supervising meals; that type of thing.

Q What are your current duties as case manager?

A Specifically, I am responsible for the prisoner's mailbox, the legal part of it.

Q Is that concerning outgoing mail?

A Outgoing and incoming.

I am responsible for taking the outgoing mail of the mailbox and down to the mail room and opening the

1 incomeing mail in front of the inmate.

2 Q How often do you take the outgoing mail off
3 the floor to the mail room?

4 A Daily.

5 Q With respect to the incoming legal mail, how
6 often do you pick it up and bring it up to the unit?

7 A The unit secretary generally pickes it up
8 two or three times a day from the mail room and it is
9 distributed to the inmate.

10 Q Can you describe what the procedure is for
11 distributing attorney or other legal mail to inmates?

12 A I would either go the inmate on the floor and
13 give him the mail and open it up in my presence or my
14 unit secretary on the 11th could contact the inmate and
15 he would come up to my office and I would open the mail
16 in front of him.

17 Q In addition to the attorney mail what other
18 duties and responsibilities do you have as a case
19 manager?

20 A I am responsible for maintaining the sanitation
21 on the unit. We make daily sanitation inspections, I
22 relieve the officer for lunch. All of my case manage-
23 ment duties, as far as duty cases, evaluations, Parole
24 Board meetings, counseling, that type of thing.
25

rs17

Amy - direct

2450

Q How often are the units cleaned?

A Daily, several times a day.

Q Are the rugs of the unit shampooed?

A Yes, they are. Generally I would say about once a week. I am really not familiar how frequently they are shampooed, that is usually on the morning watch that they are shampooed.

Q Are you also responsible in connection with the administration and giving the form known as the BP-9?

A Yes.

Q What are those responsibilities?

A I have a supply of BP-9's in my office. If an inmate comes and asks for a BP-9 I generally try to interview him and find out what the complaint is and see if I can resolve it without giving him the BP-9.

If I can't, I give it to the inmate.

Q If an inmate insists he wants it, do you always give it to him?

A Generally.

Q Can you recall any instance when You refuse to give an inmate a BP-9?

A Yes, I can.

Q What instance was that?

A 1456

rs18

Amy .. direct

2451

A It was an instance where the inmate was just trying to secure funds that belonged to him, at the very beginning of my appointment as a case manager.

He had tried several other staff members and could not get any satisfaction so I persuaded him to let me try. In that instance I refused to give him the BP-9 but he did agree to let me try to get the funds.

Q Were you successful?

A No, I wasn't, so ultimately I gave him the BP-9.

Q Can you recall any other occasion on which you refused to give an inmate a BP-9?

A No, not to the best of my knowledge I can't.

Q Specifically calling your attention to the time in or about February 3, 1977, do you recall being asked and refusing a BP-9 to Michael Gardner?

A No, that doesn't ring a bell with me.

Q Miss Amy, what are your hours as case manager?

A When I was on Unit 11 we worked, we rotated and generally I was on the 8 to 4.30 position with the exception of one day a week to pass out commissary. That day was 10 to 6.

When we worked weekends I was off during the week and I worked 8 to 4.30 on weekends.

rs19

Amy - direct

2452

Q One member of the unit staff is always on duty during the weekend?

A Yes.

Q Did you say your work consisted of an eight and a half-hour day?

A Yes.

Q Do you ever ever have occasion to work longer than that?

A At times, yes.

Q On an average eight and a half-hour day approximately how many hours would you estimate you spend in your office and how many hours on the floor of the unit?

A On the floor I would say I spend approximately two hours. That would include the sanitation.

In my office I try to spend approximately three hours a day sitting and speaking with inmates.

Q Do you have a schedule of office hours?

A No, I don't.

Q If an inmate wants to see you in your office how would he arrange to do so?

A By speaking with me. If he were on the north side and I was on the south side he could contact one of the other staff members to put him in touch with

rs20

Amy - direct

2453

him.

Q How would he get over to see you?

A If I was available to see him I would generally come over to see him.

Q If an inmate from the same side of the unit as your office wanted to see you, how would he do that?

A Come up to my unit.

Q As a case manager on Unit 11 did you have any responsibility in connection with the inmate committee?

A Yes, I did. Mr. Rivera was the unit manager and supervised that to a large extent.

We both sat in on meetings, both discussed it with inmates. I was responsible for preparing the minutes of the meetings and both responsible for securing answers to the questions.

Q Approximately how often did the inmate committee meet on Unit 11?

A We tried to make it once a week. It wasn't always possible. Sometimes it stretched to two weeks, three weeks.

Q What did these meetings consist of?

A Generally the members of the committees would be bringing their knowledge of the complaints of the

A 1459

rs21

Amy - direct

2454

population to the staff people and trying to resolve these types of problems that they had on the unit and with the other staff and with the other staff in the institution.

They also brought suggestions to the meetings how the unit could run in a more orderly manner.

MR. SCHAFER: No further questions.

CROSS EXAMINATION

BY MR. YOUNG:

Q What floor are you working on now?

A Currently on 5.

Q What day did you transfer from 11 to 5?

A It was a week ago Monday.

Q Prior to a week ago Monday when you were working on the 11th floor, when was the last inmate meeting held?

A The week before I transferred down to Unit 5.

Q So that would be approximately what date?

You don't have to be exact.

A About March 8 or 7.

Q Prior to that meeting when was the last meeting before that?

A It was four weeks or three weeks prior to that.

Q Four weeks?

jga5

Scher-direct

are cots or beds being used to house inmates?

A We house inmates on cots if there are no beds available in an institution, when our population gets overcrowded.

O And what is the procedure for assigning an individual to a cot in that area?

A Well, if there's no more beds in the area, if there's no more beds in the institution, then we will have to assign him to a cot.

Now, we don't like to keep them more than overnight. And as soon as there is an available room, a bed available, then we will transfer him to a bed.

Q On what basis are individuals assigned to various living units within MCC?

A That is according to their legal status. There is various floors in the institution. For instance, on the 11th floor we have our writ cases on 11 South. On the 11 North side we have the sentenced prisoners awaiting designation and spillover on the writ cases.

On the 9th floor, on 9 South, we have our close-custody area, where high bails will go. And we also have some pretrials, if it's necessary. We have our L range and our M range. Our L range is for the

1 jga6

2 administrative detention and our M range is for
3 disciplinary segregation.

4 On the north side is our pretrial.

5 On the 7th floor, both north and south are
6 pretrials.

7 On the 5th floor, 5 North is our sentenced
8 prisoners and some cadre. On 5 South are female units.

9 On the 3rd floor is our protective-custody
10 area.

11 And on the 2nd floor we have our cadre unit,
12 community-custody inmates.

13 Q Are individuals always assigned according
14 to the legal status that you have just described to
15 the units?

16 A We try to do it that way. However, there
17 are times when we might, because of the lack of avail-
18 ability of a bed on the room -- we might have to put
19 them on another floor.

20 Q And what steps, if any, are taken to rectify
21 that situation if you have had to assign someone to a unit
22 that is designated for a category other than what he
23 or she is in?

24 A I don't quite understand the question.

25 Q You indicated that the 7th floor is for pre-

jga7

Scher-direct

trial individuals?

A Yes.

Q And if you had to assign a post-conviction individual to that unit because there were no beds available, are steps taken to rectify that situation?

A As soon as a room is available on the floor where their legal status is, then we will switch them.

Q What is the procedure when an individual is admitted or committed to the MCC?

A After the federal authorities bring him into the institution and they remove all restraints, then the record officer will escort him into the holding area. .

Q And the holding area is where?

A On the third floor. And when we are ready to start the booking and processing, then he is brought into the receiving and discharge area, where the receiving and discharge officer will begin the booking and processing.

Q Could you take us through that process?

A Sure. When he is first brought in, he is asked to remove all his personal belongings and money from his pockets, from what he has on.

Q Is this in the R & D room?

A 1463

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A Yes, it is.

Then they start filling out the inmate personal property form. That is the Record Form 40. At that point then he is asked what size clothing he wears. All the money is receipted and jewelry is receipted. We tell him that he can wear a simple wedding band and religious medal and the amount of coins he is allowed to have on the floor.

At that point we ask him his size and bring him into the dressing room area, where he is given a complete strip shake. We give him one jumpsuit to change into right then and there and the underwear and he is told he can retain his shoes and socks.

We fill the rest of the issue in accordance with our policy.

From that point --

Q Miss Scher, you talked about a Record Form 40.

A Yes.

Q I'm asking you to look at what has been marked as respondents' Exhibit III. Can you identify that document?

A Yes. That is the Record Form 40, inmate personal property record.

A 1464

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2 Q And how many copies of this form are filled
3 out at the time?

4 A It is made out in triplicate.

5 MR. CORSI: For the record, there are
6 three copies.

7 We offer this into evidence.

8 MR. YOUNG: No objection, your Honor.

9 (Respondents' Exhibit HH was received in
10 evidence.)

11 Q Miss Scher, you indicated that the inmate
12 is at that point then issued various items according
13 to a policy?

14 A Yes, right.

15 Q Is that policy embodied in a written state-
16 ment?

17 A Yes, it is.

18 Q And approximately when was that statement
19 prepared?

20 A In July of '76.

21 Q Has that policy been updated since that
22 time?

23 A No, it has not.

24 Q What are the items that are issued at
25 that time?

A 1465

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2465

2 A Well, we give him three jumpsuits, we give
3 him three sets of underwear, we give him sheets, two
4 sets of sheets, pillowcases, socks, a wash cloth, his
5 toiletry articles, such as the throw-way razor, toothpaste,
6 toothbrush, blanket.

7 I believe I covered all the items.

8 Q And are there other items that are issued
9 to women?

10 A Yes, there are. The women will get
11 three bras and three pairs of panties plus a bathrobe.

12 Q And what then next occurs in the administra-
13 tion procedure?

14 A Well, after he has been given his initial
15 issue, then he is fingerprinted and he is photographed
16 and he is given an interview by the receiving and
17 discharge officer to fill out the commitment summary.

18 Q And what is the commitment summary?

19 A The commitment summary will give us a little
20 bit of background. We will have the time he came
21 in, the day he came in, the inmate's name, we will
22 assign a Bureau of Prisons register number, we will
23 ask him his home address, his marital status, his
24 occupation, his religion, if he has any cars or tatoos,
25 if he is claiming any particular medical problems, his

1 jga Scher-direct 2466
 2 height, his weight. Those are the kind of things
 3 we ask him on the commitment summary, and the reason
 4 he is being remanded to us.

5 Q What then occurs after that?

6 A After the commitment summary is filled out,
 7 then he w interviewed by the receiving and dis-
 8 charge officer and given an orange booklet, an MCC
 9 instruction booklet, and we will point out certain in-
 10 formation in the instruction booklet that will be
 11 pertinent to his stay here.

12 We also have an admission and orientation
 13 check list, which is something that reinforces the
 14 things we have to do and make sure that we have followed
 15 all our procedures.

16 Q When you say an admission and orientation
 17 check list, is that a written document?

18 A Yes. We have a written policy statement
 19 on that.

20 Q Miss Scher, I am showing you what has been
 21 marked as Respondents' Exhibit II. Can you identify
 22 that?

23 A That is the admission and orientation
 24 check list.

25 MR. CORSI: At this time we would offer

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Scher-direct

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this into evidence, your Honor.

MR. YOUNG: No objection, your Honor.

(Respondents' Exhibit II was received in evidence.)

Q Miss Scher, I believe you indicated that, concerning this matter of admission and orientation, there is a written policy?

A Yes, there is.

Q And when, approximately, was that prepared?

A January 17, 1977.

Q I am showing you what has been marked as Respondents' Exhibit JJ. Can you identify that document?

A That is our policy statement.

MR. CORSI: We would offer this into evidence, your Honor.

MR. YOUNG: No objection, your Honor.

(Respondents' Exhibit JJ was received in evidence.)

Q Miss Scher, with respect to this admission and orientation check list, what occurs with that check list?

A Well, the receiving and discharge officer is able to go through the procedures and make sure he

A 1468

Scher-direct

2468

1 jga

2 didn't forget anything, that he has informed the inmate
3 of where his money will be going, if he has any money
4 that it will be transferred into a trust fund account
5 for him, and he is given a copy of his Record Form 40
6 for his personal property and a receipt for his money
7 that we take from him.

8 At thaht point, after he is told on the
9 interview, he is interviewed and given the orange book-
10 let, then he is turned over to the physician's assistant
11 or medical technical assistant for his medical inter-
12 view.

13 Q Now, is this form turned over the medical
14 technical assistant?

15 A Yes, it is. The R & D officer will
16 give it to the physician's assistant.

17 At that point, after he is finished with
18 his medical examination and they go through their process,
19 the inmate is asked to sign the form as well in the
20 upper portion marked "Receiving and Discharge," and the
21 physician's assistant must sign it as well as the
22 officer.

23 Q So then on this form the inmate would be
24 signing, the R & D officer would be signing, and also
25 the physician's assistant.

A 1469

1 jga

Scher-direct

2469

2 A That is correct. He is also asked to sign
3 the top of the Record Form 40 and the bottom. There
4 is a stamp that is put on the Record Form 40 that
5 does indicate that he has been given the instruction
6 booklet and on the bottom that he understands the mailing
7 procedures for his property.

8 Q After the inmate has seen the R & D officer
9 and then the physician's assistant, what then
10 happens?

11 A At that point the type of a commitment sum-
12 mary that is used is a 5 x 8 card, where there is actually
13 the description that we have gotten plus a picture of
14 the inmate. That is given to the escort officer along
15 with the admission and orientation check list, and the
16 inmate takes his property, the issue that we have given
17 him, and he is assigned to a particular unit and
18 escorted to the floor to which he has been assigned.

19 At that point the admission and orientation
20 check list and the 5 x 8 commitment summary card is
21 turned over to the unit officer with the inmate.

22 Q Miss Scher, what happens if a full issue
23 of either clothing or the other items that you men-
24 tioned is not available at R & D?

25 A All right. We do give them what we call

jga

Scher-direct

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1 an IOU. It is a form that is prepared that would
2 indicate any items of issue that we were unable to
3 give him because of either not having his proper size
4 or not having enough stock in that item, and he can
5 later on have that as proof. He gets that as a
6 receipt and draws clothing from our clothing issue, cloth-
7 ing officer.
8

9 Q I am showing you what has been marked as
10 Exhibit KK. Can identify that?

11 A Yes. That is our IOU.

12 MR. CORSI: We offer it into evidence,
13 your Honor.

14 MR. YOUNG: No objection.

15 (Respondents' Exhibit KK was received in
16 evidence.)

17 THE COURT: Mr. Corsi, how long are you
18 going to be with Miss Scher, do you know?

19 MR. CORSI: I would think about 15 minutes,
20 your Honor.

21 THE COURT: What is your pleasure? Do you
22 want to try to finish with her before lunch or do you
23 want to suspend? It is 1 o'clock.

24 MR. CORSI: I would just as soon go forward,
25 your Honor.

A 1471

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THE COURT: Is that agreeable with petitioners?

MR. YOUNG: We are going to ask some questions.

THE COURT: Do you want to stop now or do you want to --

MR. YOUNG: I would prefer to stop now.

THE COURT: All right. Then let's stop and come back at 2:15.

(Luncheon recess.)

AFTERNOON SESSION(2:15 p.m.)

R I T A S C H E R resumed.

DIRECT EXAMINATION CONTINUED

BY MR. CORSI:

Q Miss Scher, I think before we broke off you were indicating that there is a form called the commitment summary form which is filled out at the time an individual is admitted to the institution.

I am showing you what has been marked as Exhibit LL for identification.

A That's the form.

MR. CORSI: We would offer it into evidence, your Honor.

MR. YOUNG: No objection, your Honor.

(Respondents' Exhibit LL was received in evidence.)

Q Miss Scher, what records are maintained down in the R & D section of your operation for new commitments?

A We keep the original of the Record Form 40, the inmate personal property record, where we have several places in which the inmate signs on that form. We also keep a copy of the IOU from the admission and orienta-

A 1473

1 jga

Scher-direct

2473

2 tion policy statement.

3 Q How are the files for those two forms main-
4 tained in the R & D section?

5 A We have a separate file for them. All
6 the active files are kept in one secure area.

7 Q Have you reviewed those files?

8 A Yes, I have.

9 Q When did you review those files?

10 A On Monday.

11 Q And what was the result of that review in
12 terms of the forms concerning the Record Form 40s?

13 A Well, we took a sampling of 100 at random,
14 and out of the 100, 98 per cent had signed the Record
15 Form 40.

16 Q And where did they sign? What portions of
17 the form did they sign?

18 A There are several places. They sign that
19 they received the instructions. There is a stamp that
20 is put on.

21 Q When you say "the instructions," is that
22 the orange booklet?

23 A Yes. And there is a place on the bottom
24 that they sign and give us a name of a person to which
25 they want their property mailed to.

1 jga

Scher-direct

2474

2 Q And with respect to the forms concerning
3 the issue of either clothing or other items at the time
4 of admission, did you review those forms?

5 A Yes, I did.

6 Q And what were the results of your review?

7 A Ninety-five per cent had an IOU in the
8 jacket, and they are not required to sign this but at
9 least have had it.

10 Q What did those IOUs reflect?

11 A Either what we owed them, what they didn't
12 get on direct issue. And then if they got full issue,
13 they took an IOU and we wrote "Full issue" on it and
14 kept it in their jacket.

15 Q Miss Scher, I showing you what has been marked
16 as Respondents' Exhibit MM and ask you if you could just
17 briefly look over those and identify those documents.

18 A These are the kinds of documents that we
19 find in the inmate's central file kept on the units
20 on each inmate. There also might be some documents
21 that came with them on their transfer from another
22 institution, their central file documentation.

23 MR. CORSI: Your Honor, at this time I
24 would like to introduce these documents into evidence.
25 These are the commitment summary forms or similar forms

1 jga Scher-direct 2475

2 for the inmate witnesses with the exception of Mr.

3 Victory. I believe Mr. Young has seen these.

4 MR. YOUNG: I am going to object to the
5 admission of these because not one of these identifies
6 itself as being from the Metropolitan Correctional
7 Center. These are all from other institutions or have
8 no identification showing what institution they are
9 from.

10 MR. CORSI: Your Honor, with respect to
11 the first document, which is a document signed by Mr.
12 Miller, Glen Miller, this document was signed on February
13 2nd, which was the date that I believe he testified
14 he came back to MCC on a writ.

15 THE COURT: I don't understand the objec-
16 tions. These you say are not MCC forms?

17 MR. YOUNG: No. Your Honor, if you will
18 recall, you asked the U. S. attorney to produce the
19 forms that our inmate witnesses had signed, allegedly
20 granting MCC authority to endorse their checks, and this
21 is what the respondents are introducing, but none of
22 these forms identify themselves as authorizing MCC to
23 endorse their checks or even coming from MCC. Most
24 of them come from Alderson --

25 THE COURT: Is that what you were intro-

BY MR. CORSI:

Q Miss Scher, how does a new commitment get up to the housing floor where he or she is assigned?

A After he finishes in the R & D area?

Q Yes.

A Okay. He is assigned by the Count and Announcement Control area to a specific unit according to his legal status. Then he is escorted by the escort officer. He has his institution clothing and toiletry articles, and the escort officer would have his 5 x 8 card - that is the commitment summary card - plus the admission and orientation check list.

Q On an average, Miss Scher, how long is it from the time that an inmate is finished with the booking procedure to the time that he is brought up to the unit?

A After he is processed?

Q Yes.

A Sometimes we wait until we have two or three to take on, because we don't have the stacking facilities to take them every two minutes. We might wait for two or three to be ready.

Q And on an average, how long is the wait?

A It shouldn't be more than a half hour, 45

minutes.

Q On the average, what is the length of time that an individual would wait down in the third floor area?

A It depends on the volume, the time of day. For instance, on the volume, if there are people coming in off one of our buses and we would be getting 20 to 28 people from the bus, and court returns at the same time and new commitments. So it depends on the volume. The time element is a factor there.

Q What is the procedure for having an individual transported to the courts for an appearance in court?

A Usually, the day before, the marshals will call us and tell us what time to have an inmate ready for court. And that evening we prepare, late in the afternoon we prepare, a court list indicating what districts and what inmates, what their floor assignments are, so that we can pick them up on time, and what hours they are wanted by the marshals.

Q And what then happens with that court list?

A The court list is then turned over to the unit officer on the floor between 8 and 9 in the evening for the next day.

Q Miss Scher, I am showing you what has been

1 jga

Scher-direct

2480

2 marked as Respondents' Exhibit NN and ask you if you
3 can just briefly review these documents?

4 A These are our court lists.

5 Q Would you take a look at the documents
6 in the other packages?

7 A These are also court lists. These are
8 more court lists.

9 MR. CORSI: At this time, your Honor, we
10 would offer the court lists into evidence.

11 MR. YOUNG: No objection.

12 (Respondents' Exhibit NN was received in
13 evidence.)

14 THE COURT: Who are you expecting to
15 read those?

16 MR. CORSI: I would like an opportunity,
17 if necessary, to refer to them or summarize them in post-
18 trial briefs.

19 THE COURT: Okay.

20 Q When an individual's name is on the court list
21 for an appearance, what then happens or how is he prepared
22 for transport to court?

23 A Okay. Depending on what time he is wanted
24 for court, we bring him down, usually 45 minutes before
25 he is to be picked up, and he is dressed out for court

A 1479

jga

Scher-direct

2481

in street clothing.

We don't like to bring them down early in the morning if they are not wanted in court before 10 or 11 o'clock. We try to bring them down as close to their pickup time as possible.

Q What factors affect the length of time that an individual before court is brought down to the third floor area?

A The very earliest we would have court pickup is usually at 7:30, and we would bring the inmate down by a quarter to 7. Therefore at 6 o'clock we have our count going on; we have to wait until he eats on the floor and then he is brought down and dressed out.

A 1430

ars

Scher - direct

2482

Q Are there occasions when inmates do have to eat down in the third floor area?

A There were occasions when they had to eat in the third floor area. Many times we have marshals picking up inmates with all their belongings at 6 a.m. to travel by air and we have to get them down very early.

Q When an individual is brought back from court, what is the procedure for getting that person back up to the housing unit?

A After he is brought in and are receipted back by the marshals, brought to R & D area, they are dressed back in to their institutional clothing. We do shake him down at that time.

Then we try to take a few at a time up to the various floors, escorted after that back to his unit.

Q And generally how long does an inmate stay down on the third floor after he is brought back up?

A We try not to have anyone down an unreasonable length of time but it depends on what time he is returned from court.

If he is being returned after four o'clock when our institutional count is going on, he has to remain in the holding area until after the court is cleared and upon completion, it is priority to get these court people

rs2

Scher - direct

1 back as soon as possible so they may have visits or
2 eat the evening meal.

3 Q Are there any other factors that effect how
4 long an individual would be kept down in the third floor
5 area?

6 A If the receiving and discharge unit is
7 drocessing new commitments at the same time the court
8 returns, they have to finish the processing procedures
9 of new commitments. That might take an hour and then
10 immediately get to the court returns.

11 Q With respect to the court lists that have now
12 been introduced in evidence, is that the complete list
13 on a given day for the number of people who will be
14 leaving the institution to go to court?

15 A No, many times in the morning we get calls
16 that we didn't get the night before and have to add five
17 and fifteen people to the court list that we were not aware
18 of; usually have an afternoon court appearance or late
19 in the morning.

20 Q During the past month, Miss Scher, what is the
21 average number of individuals admitted to the MCC each
22 day, new commitments?

23 A I did a survey of the month of February 1977
24 for weekdays and the average was 22 new commitments per
25

rs3

Scher - direct

1 day and a release of 27 per day. That is during the
2 week.

3 Q What is the bus schedule for the MCC bus?

4 A Our regular bus schedule for the first three
5 weeks of every month, on Monday we go to Lewisburg, that
6 is the westbound trip and return on Tuesday back to New
7 York.

8 On Wednesdays we go to Danbury and return
9 the same day.

10 On the fourth week of the month we make a trip
11 to Lewisburg on Monday and return on Tuesday and on
12 Wednesday we go to the southbound trip to Petersburg and
13 return on Thursday.

14 On the fifth week we are idle or maybe there
15 may be some emergency bus schedule.

16 Q Are special bus runs made?

17 A Yes.

18 Q On an average how often are special bus runs
19 made?

20 A We took a consensus of the last three months
21 and we had an average of three to five extra bus runs a
22 month.

23 Q Generally how much in advance are special bus
24 runs scheduled?
25

rs4

Scher - direct

1
2 A We could het a special run in the morning to
3 run late in the afternoon if it is local. Very late
4 in the afternoon or very early in the morning, depending
5 on the population.

6 Q You say depending on the population. What
7 do you mean?

8 A In an effort to reduce the population we try
9 to have the designated people out as quickly as possible.

10 Q What time do you generally have the scheduled
11 bus leave?

12 A It is schedule to leave between six and seven.
13 It leaves at seven.

14 Q That is for the scheduled runs as well as some
15 of the unscheduled?

16 A If it is an odd run, maybe late in the afternoon
17 but normally it is always at 7 a.m. in the morning.

18 Q When is the bus list prepared for people that
19 will be transported out of the MCC?

20 A On the working day prior to its departure.

21 Q So that if the bus is leaving on Monday, then
22 the list would be prepared on Friday afternoon?

23 A Friday.

24 Q When is the list sent up to the floors?

25 A Late in the evening, eight or nine in the

A 1484

Scher - direct

2486

rs5

evening.

Q Of the day that the list is prepared?

A Yes.

Q What additional functions must be performed by your unit after a bus list has been prepared and has been sent up to the floor?

A We must gather all the records from the Medical Department, from the unit central file and our judgment and commitment records must go with the records to the next designated institution.

We must also gather all personal belongings and have that ready for shipment.

Q When is an individual designated from the MCC?

A As soon as we receive the authorization, the judgment and commitment with the seal from the Court we start working out the designation as soon as it is received in the MCC

Q After an inmate has been designated, when is he or she transferred from the MCC?

A On the next available bus run or special trips, it might cause a special trip.

Q You indicated that an individual would be transferred out on the next available bus run.

What do you mean by the next available bus run?

rs6

Scher - direct

2487

A Well, if we have already left on Monday to go to Lewisburg and Wednesday we receive a judgment and commitment and the designation would be Allenwood or Lewisburg, we can't send him out until the next run which is the following Monday. We may have to even though we have designated people, they have to wait until the next bus run.

Q How long in advance of a scheduled bus run are all the seats filled for that bus?

A Usually all seats are filled. I don't understand the question.

Q At what point in the process do you know that all the seats have been filled and it is ready to go, filled to capacity?

A The evening before it is going to leave.

Q When do you stop putting people on the bus list?

A When we have 28, a full bus list.

Q The assignment continues through that period?

A Yes.

MR. CORSI: I have no further questions, your

Honor.

THE COURT: Let me make sure I understand.

If inmate X has been designated to Lewisburg

rs7

Scher -

1 on a Wednesday, normally he won't go to Lewisburg until
2 the following Monday, right?

3 THE WITNESS: That is correct.

4 THE COURT: But normally he would go on the
5 following Monday?

6 THE WITNESS: Yes, that is correct.

7 THE COURT: When and how is that inmate told
8 of his designation and probable time when he will
9 ship out?

10 THE WITNESS: We have just started a new
11 procedure where we let him know as soon as he has been
12 designated.

13 THE COURT: When did you start that?

14 THE WITNESS: Yesterday.

15 THE COURT: I was thinking of mking you start
16 it but you beat me to it.

17 If the MCC thinks that it is a good idea, Mr.
18 Corsi, I want you to add that to your list of subjects for
19 a consent decree because the things you did yesterday,
20 instead of being ordered to do them tomorrow, I think
21 they are not going to be left on a voluntary basis,
22 okay?

23 MR. CORSI: Yes, sir.

24 Thank you, no further questions.
25

rs8

CROSS EXAMINATION

BY MR. YOUNG:

Q Is there a woman stationed in the R & D section at all times in order to dress down the women brought back or taken out?

A There is a woman in the record office available for dressing females during the day hours.

Q What about during the evening and night hours?

A We get the available female officer.

Q Did you ever use the telephone operator for this purpose?

A Occasionally.

Q When you say we get the female officer, do you mean somebody who would be normally on the floor or elsewhere?

A On duty.

Q Miss Scher, referring to Respondent's Exhibit LL, the document that has the check authorization section on it, did you search your files to determine whether you had copies of the LL signed by the inmate witnesses in this case?

A By the inmate witnesses in this case?

Q Yes.

1 rsll

2 A Second floor.

3 Q Other than the second floor doesn't every other
4 unit at the MCC contain both pretrial and convicted
5 people?

6 A I would have to verify that.

7 Q To the best of your knowledge?

8 A It could be. I would have to check that out.

9 Q You testified on direct concerning the
10 practice of having inmates sleep on cots in certain
11 balcony areas at certain times?

12 A Yes.

13 Q Have inmates ever been required to sleep on
14 the floor without even having been issued a cot?

15 A It is not the policy to have them sleep on
16 the floor.

17 Q Do you know if that has ever been happened?

18 A I'm not aware of it.

19 Q Isn't it a fact on January 25, 1977 certain
20 individuals were required to sleep on the floor of the
21 balcony of Unit 11 North?

22 A I can't testify to that; I don't know.

23 Q Do you check on people who are -- I realize
24 you are not in the institution 24 hours a day -- but when
25 you return say the next day do you always check to find

rs12

Scher - cross

1 out which people have been housed in the balcony area?

2 A I would not know the names per se but there
3 is a format that we know how many people are on the
4 balconies on beds or cots.
5

6 Q You don't know for sure whether all the people
7 were provided with beds?

8 A It is our policy to provide them with a bed.

9 Q But I am asking from your personal knowledge
10 you don't know whether they are or not?

11 A I don't know.

12 Q Could you tell me when the last time was that
13 persons were required to sleep on balconies on cots?

14 A Last night.

15 Q Was it your testimony on direct that people
16 are not normally required to sleep on balconies for more
17 than one day?

18 A We would try to put them in the next available
19 room if there is one available.

20 Q Well, are they sometimes required to sleep
21 on the balcony more than one day?

22 A I think they may be sometimes during the day
23 and when people are released from court, as soon as we
24 have an available room we move the persons off the
25 balcony area into a room.

rs13

Scher - cross

Q Could they be required to sleep at those locations four days? Do you know if they are required to sleep as long as four days?

A It is possible.

Q Do you know whether last weekend persons were required to sleep on 9 North balcony for four days?

A Four days on a weekend?

Q Starting on a Friday.

A It is possible.

Q Do you know whether several weeks ago five or six people were required to sleep on 11 North for three or four days?

A I couldn't specifically give you their names.

Q Do you know whether that happened?

A The same people were there five days?

Q Three or four days.

A It is possible. It is not our policy but it could happen.

Q You testified on direct when you checked the folders you found 95 per cent of them contained IOU's or some of them didn't mean that they hadn't had all their clothing articles?

A No, I said that if there is an IOU in there it would either indicate they were missing some clothing

rs14

Scher - cross

1 items or they had a full issue. There were copies of
2 that form.

3
4 Q When you were making that survey did you have
5 occasion to determine what percentage of those persons
6 had IOU's in their folders because they had not received
7 their full complement of clothing?

8 A Yes, I did take a survey and in the mail
9 population 95 percent had IOU's in their jackets.
10 50 percent did not sign it but there was an IOU in there
11 indicating whether they got the full issue or not.
12 They are not required to sign that form.

13 Q You stated that the IOU would be in their
14 jacket if they got a full complement?

15 A That is correct.

16 Q That is 95 percent?

17 A 98.

18 Q Which percentage of the people who did not get
19 a full complement of clothing?

20 A I didn't take that survey, I just wanted to
21 see if it indicated whether it had an IOU issued.

22 Q Persons arriving at the MCC from another
23 institution or off the street, approximately how many hours
24 does it take from the moment they arrive until they
25 finally are given their assignment sleeping place and

rs15

Scher - cross

taken there?

A If it is only one person coming in, our normal processing time policy is no more than one hour from the time they walk in the door until he is escorted to the floor.

Q In terms of practice though, to the best of your knowledge, what is the average delay, not assuming one person but normal traffic, what is the average delay from the time the person enters the institution until the time he finally arrives at his sleeping place?

A Average delay?

Q Average amount of time.

A It shouldn't be more than two hours, two and a half hours if there were a delay.

Q Isn't it a fact that there is a delay as much as six to eight hours?

A Not to my knowledge. Six to eight?

Q Returning from court, approximately how many hours delay, say a person returns at five o'clock if court ends at 4.30, approximately what time would that person normally get to their housing unit?

A If there is another court besides the Southern District of New York or the Eastern District or Jersey coming back at the same time, it depends on how many come

fsl6

Scher - cross

2497

back.

If there is 40 people coming back the delay would be an hour, an hour and a half, it could be.

Q Do you know an inmate named Alex Ross?

A No.

Q Alex is the first name, the individual that works in the Court of Appeals -- Burke, I am sorry.

A Alex, I know Alex Burke.

Q Did you have occasion to observe him in the R & D section waiting to be taken up?

A To observe him? Yes.

Q Approximately how long does he normally wait there?

A I haven't timed it.

Q To the best of your knowledge, just based on your daily observation? You see him every day, don't you?

A Well, he comes back at five o'clock. I leave my post at 4.30. If I happen to work a little later I will see him.

Q You leave your post at 4.30?

A Yes.

Q A lot of the testimony you have given has been about what the policy is rather than what your own

knowledge of the practice is at the MCC, isn't that correct?

MR. CORSI: What testimony?

MR. YOUNG: As to the length of time between arriving and delivery to the residential unit and the length of time processing takes in the R & D section.

Q Doesn't a lot of this take place after you leave?

A It could take place after I leave.

Q Isn't it true most people return from court after you leave?

A New commitments come in all day long.

Q Returning from court now.

A After I leave? No, a lot of commitments have been brought to court in the morning and come back at two in the afternoon.

Q People in court all day generally return after you leave, isn't that correct?

A Sometimes they come in at four.

Q Any records kept as to the time those people are returned to their units?

A Not to my knowledge. How long they stay in the holding area?

Q Yes.

fsl8

Scher - cross

2499

A Not to my knowledge.

Q You really have no knowledge as to what the average delay is that might occur?

A The time they came back from court is posted in our logs so that puts them back on the count.

Q But if they arrive after the four o'clock count you have no knowledge of when they got back to their units?

A The next count starts at 7.30. We have to know before that, take them back to the units before that.

Q Would they always take them back to the units before or would they hold them until after the 7.30 count?

A That would be highly unusual.

Q They are not required to take them back before 7.30?

A I don't know what you mean by required. They try to get them back as soon as they can.

Q But they aren't required to take them back before the 7.30 count? They can leave them in the bullpen over the 7.30 count.

A If they have to leave them they will leave them but I don't see what you mean by that.

1 jqa

2 those areas.

3 Q All right. Are they also going to be
4 admitting the attorney into the area and admitting the
5 inmate into the area.

6 A The inmate will be taken down, as he always
7 is, from the escort officer. Then he is turned over
8 to the R & D office, or the record office. And at
9 that point the attorney and the inmate will be escorted
10 to that area. The policy hasn't been exactly firmed
11 up as yet.

12 Q Miss Scher, under the present policy,
13 attorneys can visit on this third floor, isn't that
14 correct?

15 A Special attorney visits.

16 Q That are requested in advance.

17 A Exactly.

18 Q And aren't there two offices that are avail-
19 able for that use?

20 A Sometimes we even try to arrange three offices,
21 if we can.

22 Q Under the present practice, have you observed
23 attorneys waiting, attorneys such as myself, waiting
24 for prolonged periods of time?

25 A Yes, I have.

jga

Reas-direct

2508

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2 A That is my position and background.

3 MR. CORSI: We would offer this into
4 evidence.

5 MR. MUSHLIN: No objection, your Honor.

6 (Respondents' Exhibit 00 was received in
7 evidence.)

8 Q What is your educational background.

9 A I have a Bachelor of Science degree from
10 Cornell University with a major in food and nutrition.

11 Q And are you a registered dietitian?

12 A I am a registered dietician.

13 MR. CORSI: Your Honor, based on Miss Reas'
14 education and experience we would ask that she be
15 qualified as an expert in the field of nutrition and
16 food preparation.

17 MR. MUSHLIN: No objection.

18 Q Miss Reas, what kind of food cycle or menu
19 cycle is the Bureau of Prisons on?

20 A It is on a 35-day menu cycle.

21 Q And who prepares that menu?

22 A Each food administrator at each institution.

23 Q And when the food administrator prepares
24 that menu, is a copy sent to the Bureau central office?

25 A It is, annually.

A 1498

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Reas-direct

2509

Q And are there other procedures for the Bureau, the central office of the Bureau, receiving menus that are served at the institution?

A We receive an as-served menu from each institution each month.

Q Miss Reas, in attempting to judge the nutritional adequacy of a menu that you described on a 30-day cycle, based upon your knowledge and experience in the field, is it proper to take three days of that cycle and do a nutritional analysis of that?

A It would be better to do a week or the full cycle.

Q And why is it better to do a week or the full cycle?

A Because of the variation in the foods offered. With one full week's menus, for example, you get a better variety and items would be included that maybe would not be included in just the three days.

Q Have you done an analysis, a nutritional analysis, of the menus served at MCC?

A I did.

Q And for what period of time did you do that analysis?

A I did one week, the 6th to the 12th,

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Reas-direct

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February, 1977.

Q And did you embody the results of your analysis in a written form?

A I did.

Q I am showing you what has been marked as Respondents' Exhibit PP and ask you if you can identify this document.

A Yes, I can.

Q What is this document?

A There is the nutritional analysis of that week, the 6th to 12th, February, 1977.

Q That you performed?

A For the New York MCC that I performed.

MR. CORSI: At this time we would offer it into evidence, your Honor.

MR. MUSHLIN: No objection, your Honor.

(Respondents' Exhibit PP was received in evidence.)

Q And, Miss Reas, based upon the analysis that you performed, did you form an opinion as to whether or not the menu served at MCC meets the nutritional minimum requirements for the individuals housed there?

A It did, in all respects.

Q And did your analysis provide for the exclu-

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Reas-direct

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sion of pork from the menu?

A I did an analysis without pork on just two of the items that pork is rich in, the thiamine and the iron.

Q And what were the results of that analysis, that portion of the analysis?

A That the menu was still adequate nutritionally.

Q Miss Reas, there has been testimony in this case that the nutritional adequacy of the therapeutic diets served at MCC are "questionable." Do you have an opinion with respect to that analysis?

A I did not do a nutritional analysis on the therapeutic diet. However, they are planned taking into account the basic four food groups, and so they should meet the nutritional standards.

MR. MUSHLIN: I am going to object. She did not do the analysis and there is no basis for that opinion

THE COURT: Is there any evidence in the record thus far one way or another about the adequacy of therapeutic diets?

MR. MUSHLIN: There is some evidence, yes, your Honor, by Miss Wilson in her report, which has been introduced in evidence, about the therapeutic

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Reas-direct

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A No. The kind of foods being served on all of the six-month cycles or as-served menus that I reviewed were all similar.

Q Miss Reas, have you had any training in the operation and use of microwave ovens?

A Some.

Q What is that training that you had?

A I had a one-day seminar at Litton Manufacturing Company in Minneapolis, which was put on for the Bureau of Prisons, and one regional Bureau of Prisons workshop in Philadelphia, where we had a presentation by that --

Q How widespread --

MR. MUSHLIN: I don't think she finished answering that question.

Q I'm sorry. Who presented that?

A That was presented by Litton Manufacturing.

Q And that was at Philadelphia?

A The Philadelphia Regional Food Conference.

Q And how widespread is the use of microwave ovens in institutional settings?

A It is very widespread in institutional, commercial food service, and some Air Force bases that I know of.

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Reas-direct

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Q And based upon your knowledge and experience both with microwave ovens and in food preparation and in the field of nutrition, I would like you to assume a hypothetical situation: that a meal is cooked and then it is covered and refrigerated, and then just prior to the time of serving the meal is taken out of refrigeration and is heated in a microwave oven.

Based upon that hypothetical, what, if any, nutrient loss would there be by using that process?

A There should be very little, if any, nutrient loss since the food has already been cooked and this is just a heating operation.

Q What effect, if any, does refrigeration have?

A There should be no effect, if it is properly handled and refrigerated.

Q Miss Reas, in your capacity as an employee of the Bureau of Prisons in the central office, have you done an audit of MCC?

A Yes, I did.

Q When was that done?

A November, 1976.

Q And have you had any other audits or any other procedures with MCC concerning food service?

COLEY SQUARE NEW YORK N.Y. 701 0370

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jga

Reas-direct-cross

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A There was a follow-up visit made last week.

MR. CORSI: Nothing further.

CROSS EXAMINATION

BY MR. MUSHLIN:

Q Miss Reas, are there any substitutes for potatoes?

A We call rice, macaroni, spaghetti and noodles potato substitutes.

Q So in planning a menu, one could substitute those items for potatoes and get more variety in menu, is that right?

A Yes.

Q Let me ask you this: Assume that there is a menu that in a 14-day period served potatoes 15 times. What would your opinion be of that in terms of variety?

A That it would be adequate, because 14 days is 28 lunches and dinners. So if you served 15 out of 28, 15 meals out of 28 potatoes, that would leave you nine for the rice, macaroni, spaghetti and noodles, and we wouldn't like to see those offered any more often than that.

THE COURT: Isn't it 13? You are not a mathematician. Neither am I.

1 jga

2 of what a man is actually consuming would have to be
3 done by observation of a man's eating during a day.

4 Q Right. And that is called a sight visit,
5 isn't it?

6 A Well, a sight visit, just watching, wouldn't
7 do it. There are many ways of doing on. But it
8 would be following a person throughout a day's feeding
9 and determining exactly the quantity that he has eaten
10 that day.

11 Q So you would want to look, in the food pre-
12 paration area, as to whether or not portions were uni-
13 form?

14 A It had to be assumed that the portions
15 were uniform.

16 Q I am saying that if you wanted to see whe-
17 ther or not in an institution men were getting -- and
18 women -- nutritionally adequate diets, isn't it fair
19 to say that one of the things you would want to do is
20 do a nutritional analysis that you did of the menus
21 on their face? But then isn't it also fair to say
22 that what you would want to do is go into the food ser-
23 vice area and see whether or not the portion controls
24 are uniform, isn't that right?

25 A Yes.

attention to it.

MR. MUSHLIN: No further questions.

REDIRECT EXAMINATION

BY MR. CORSI:

Q You indicated that there is no policy statement on Muslim diets, is that correct?

A That is correct.

Q Is it that there is no policy statement, written policy statement?

A There is no written policy statement.

Q Is that what you meant when you said there is no policy.

A Yes.

MR. CORSI: Thank you.

THE COURT: Miss Reas, when pork is deleted to comply with the Muslim religious requirements, some other thing on the menu is added to replace the pork, a vegetable or potatoes, whatever.

Would that in your judgment as a dietician be nutritionally sound?

THE WITNESS: Yes, sir.

THE COURT: That is you think that substituting potatoes for a meat course would give you a comparable nutritional benefit?

THE WITNESS: Not substituting potatoes but one of the nutrients in pork is thiamin and that is also in dried beans and enriched breads which are a source of that and we do serve pork only maybe two or three times a week, which wouldn't deprive anyone of the nutrition equivalent in a week's menu.

THE COURT: But the particular meal, would that make the meal in your judgment a deficient meal or do you speak of a deficient meal?

THE WITNESS: I wouldn't speak of a deficient meal.

MR. MUSHLIN: May I, your Honor?

RECROSS EXAMINATION

BY MR. MUSHLIN:

Q Miss Reas, is it true in the week you analyzed the menu at the MCC pork was served six times? Do you want to look at it to refresh your recollection?

A Yes, I would like to.

Q That is RR, I believe.

A I wasn't considering the breakfast meals.

Q You were not?

A No, I wasn't.

Q Could you just tell us on RR how many meals
pork was served, including breakfast?

MR. CORSI: As you go through would you indicate what the meals are and what items?

A Bacon on brunch the first day.

Pork patties on dinner the second day.

Sausage on breakfast the third day.

Polish sausage on lunch the fourth day.

Ham steak on dinner the fifth day.

And sausage links on brunch on the seventh day.

I wasn't counting the breakfast.

THE COURT: Is there in the setup a special kosher breakfast menu for people on kosher diets?

THE WITNESS: Not for breakfast. If my memory is correct on the kosher diets they have cereal, toast and fruit and coffee.

THE COURT: You do not have a meat substitute for breakfast?

THE WITNESS: No.

THE COURT: I wouldn't have thought so.

I take this testimony as given to me as being essentially sound and frankly what I was interested in when I asked about pork was the lunch and evening meals rather than breakfast. A lot of us don't eat eggs, for example.

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rs6

Richardson - direct

Q Mr. Richardson, directing your attention to the night of October 21 through 22 of 1976, were you on duty?

A I was working 12 to 8, 12 midnight to 8 a.m.

Q What time did you arrive at the MCC?

A I usually get there about 11.30.

Q On that night were you assigned to Unit 5?

A Yes, sir.

Q Would you describe what happened when you arrived at Unit 5?

A When I arrived at Unit 5 I entered the closet to sign the evening officer off.

While I was in the closet signing the log book I heard a crash like glass breaking.

I came out of the closet to see what happened and I asked a group of inmates what happened. They said that Miss Kaye Harris had thrown a glass.

I approached Miss Harris about the glass. I asked why did you do that thing. She said she didn't get her medication.

I said, "That is no reason for you to throw a glass, you could put somebody's eye out or hurt somebody."

I told her, "If you didn't get your medication why didn't you come to me and ask me and give me a chance to try to get it for you?"

A 1509

rs7

Richardson - direct

2537

1 She seemed to be a little upset and walked
2 away. So I called the lieutenant. I told the lieutenant
3 what happened and he told me to write a shot on her.
4

5 I wrote the shot, the lieutenant came up and
6 got her medication. He told me to write a shot and send
7 it down.

8 I sent it down and he called me about 15 minutes
9 after he left and told me to lock her in for throwing the
10 glass.

11 So I went over to her and told her she had to
12 be locked in her room for throwing the glass. She told
13 me that she wasn't going to go and I better not put my
14 hands on her.

15 I told her I wouldn't put my hands on her and
16 called the lieutenant again. I called the lieutenant and
17 Lieutenant Moore and Officer Somers came up on the floor
18 and Lieutenant Moore went over to her and asked her to go
19 to her room immediately and she refused and she said don't
20 put your hands on me.

21 Moore asked her to go to her room and he
22 couldn't condone the fact that she threw the glass. She
23 had already gotten the medication. She still refused.

24 So Officer Somers grabbed her around both
25 legs and Lieutenant Moore around the waist and proceeded

1 rs8
2 to carry her into the room.

3 She locked her hands behind Officer Moore's neck
4 like this (indicating) and when they got to the room her
5 hands came down and he was bleeding.

6 At this time we just forgot about her and the
7 main thing was to get him down from the floor because he
8 was bleeding pretty bad.

9 So we got him down off the floor, I remained
10 on the floor.

11 The lieutenant called back upstairs and told
12 me to lock Kaye Harris in her room.

13 By this time Miss Harris went and took all her
14 clothes off and was standing on the tier and I told her
15 she got to go to her room and she refused and a girl Booth --
16 I forget her first name, it was Miss Booth came down and
17 instigated and by this time a group of girls came out on
18 the tiers and was standing on the tiers.

19 So the lieutenant called me and asked what
20 the situation is up there. I told him.

21 He said, "Mr. Richardson, tell the girls they
22 have to go to their room."

23 Q Can you briefly describe, when you talk about
24 Miss Booth instigating, what she was saying and doing?

25 A Well, I told them they had to go to their room.

Richardson - direct

rs9

Miss Booth said, "Bullshit, we are not going and we got to stick together and we are not men, we are women and you can't beat us like we are men."

She said, "We have pool sticks and if anybody wants to fight let them come up."

I said, "Miss Booth, nobody is going to beat you up here", and I told her, the girls, nobody is going to bother you. I told Miss Harris -- I asked the other girls then to tell Miss Harris to put her clothes on because nobody was going to bother her. The girls said, "You are the police too."

Q Then what happened?

A Well, the lieutenant called me back up again about 30 minutes. There was ample time for them to go to their rooms if they wanted to go. The time lapse from the time Mr. Moore was cut until the time they got him out and finally came up, they had time to go to their rooms. They had plenty of time, like 45 to 55 minutes.

Q Did you tell them on that occasion to go to the room?

A Yes. I also said to them "Whoever doesn't want to be involved, please go to your room now."
Nobody moved.

By this time the lieutenant had called me

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1 rsl0

Richardson - direct

2 again and I told him they would not go to their rooms
3 and he said okay, they're going to come upstairs.

4 I told the unit ladies again, "Whoever don't
5 want to get involved go to your rooms."

6 Nobody moved.

7 When the other officers came up there was no
8 physical contact with the other officers and the young
9 ladies, they came with their shields and helmets and
10 Anne Marie was sitting on the pool table in front of the
11 door where she could see who was coming in with the shields
12 and she said, "Oh shit, the mother fuckers got riot equip-
13 ment" and they broke and ran.

14 The officers did not put their hands on them,
15 they hit their sticks on the wall like this and then they
16 went in their rooms.

17 Q During the course of this incident were you
18 able to see Miss Susan Braunig?

19 A Yes, sir.

20 Q Where did you see her?

21 A I talked to Miss Braunig on the bottom of
22 G tier standing there in a nightgown.

23 Q Did you tell her along with the other women
24 to go to their rooms?

25 A All the women to go to their rooms, all of

rsll

them.

Q Did you subsequently write a memo or a list of names to Associate Warden Johnson of the women who had not gone to their rooms?

A I gave a list of names of everybody that I visually saw, that was physically in that area.

Q Subsequent to that were the women locked in their rooms?

A Yes, sir.

Q In the course of the remainder of the evening did you spend any time on the 5 South unit?

A When the women were locked in we have to stay over there because they have no toilet facilities and we have to stay there if they want to go to the toilet, they bang on the door and we let them go to the bathroom and go back in.

Q Do you remember making periodic checks to see if the women wanted to go to the bathroom?

A I was there. If they wanted to go, they know all they had to do was bang on the door but there was one inmate that I checked on periodically, that was Miss Harris because she had been, you know, involved in the incident, directly involved in the incident. So I checked on her.

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rs12

Richardson - direct

1 Q Do you recall letting any women out to go to
2 the bathroom that evening?

3 A I believe I let a few out, yes.

4 Q Do you recall whether Miss Braunig knocked on
5 the door to indicate she wanted to go out that evening?

6 A I don't remember.

7 Q Mr. Richardson, what is your practice with
8 respect to inmates who wish to bring legal papers, pads
9 or pens into the visiting room for a legal visit?

10 A We have memos in the institution that state
11 they are allowed to take legal papers into the visiting
12 room.

13 Q What is your own personal practice in that
14 regard?

15 A Well, if someone comes to me with papers and
16 they say legal, I don't read them because we can't read
17 them because that is none of our business really. There
18 are a lot of things they don't want us to know but we do
19 go through those to make sure that is all that is in
20 there, no contraband. I know I do.

21 Q Do you recall any incident on which you did
22 not permit an inmate to bring legal papers or a pen into
23 the visiting room for a legal visit?

24 A No, sir.
25

rs15

Richardson - cross

Q Mr. Richardson, you testified concerning certain visiting procedures.

Is one of your responsibilities as an officer to conduct strip searches of people?

A Yes, sir.

Q Relative to visiting?

A We conduct strip searches on inmates when they come out of the visiting room.

Q Do you do this to women or just men?

A No, we don't strip search women, we have a woman do that.

Q You do it for men on the fifth floor North most of the time?

A 5 North and on 3, yes.

Q When you conduct strip searches of persons is that a search only of the individual in the room with you or are there usually several inmates there at one time?

A I like to have at least maybe two or three of them in there because a lot of times we have quite a few visits and if we took them one at a time we would never really get done.

Q In other words, you search several people at the same time?

rsl6

Richardson - cross

1

2

A At least three.

3

Q Have you ever worked on the third floor?

4

A Yes, sir.

5

Q Have you conducted strip searches there?

6

A Yes, sir.

7

Q Have you ever stated to an inmate that you would

8

kick his ass?

9

A Did I say to an inmate I was going to kick his

10

ass?

11

Q Have you made that statement to an inmate?

12

A Maybe, I don't remember. I don't recall.

13

Q Did you ever make a statement to an inmate

14

during a strip search that "You are nothing but a fuck'n

15

punk and I ought to bust you in the face?"

16

A I don't recall.

17

Q You don't recall whether or not you made it?

18

A No, I don't.

19

Q Did you ever tell an inmate on 3 North that

20

they were being locked in their rooms at night because of

21

the Wolfis suit?

22

A No.

23

Q You never made any reference to the lawsuit to

24

any inmate?

25

A They have come to me and told me things con-

1 rs17

Richardson - cross

2 cerning it.

3 Q Have you ever told any inmate that anything
4 that was happening at the institution was because of
5 this lawsuit?

6 A No, because I don't know anything about it
7 myself except what they told me.

8 Q When you were functioning as a floor officer
9 have you ever had occasion to give out medication yourself?

10 MR. SCHAFFER: I object, your Honor. This
11 isn't Mr. Young's case and not his witness.

12 THE COURT: Sustained.

13 MR. YOUNG: I would just like to point out
14 that they were using this individual's testimony as to
15 some of the duties of a floor officer and I think that was
16 one of them.

17 Q As floor officer on the women's unit have you
18 ever entered a female's room?

19 A During the day. I don't like to do it at
20 night unless it is absolutely necessary.

21 Q Other than the one incident you described with
22 Kaye Harris, have you ever happened onto a female inmate
23 when they were in any state undress?

24 A Have I ever what?

25 Q Have you ever encountered a female inmate not

1
2 fully clothed?

3 A Do you mean during the count or something?

4 Q On any occasion, does that happen every so
5 often?

6 A When you count you have to physically see the
7 individual. You can't assume they are in the room, we
8 open the door but when there is a count the young ladies
9 know there is a count because a bell goes off and the
10 officer is going to come and they know they are going to
11 come and they should put something on. I have opened
12 the door and found women with nothing on but I don't pay
13 no mind to it, I close the door and keep going. I have
14 a wife to look after.

15 Q Other than when conducting a count, has it
16 ever happened on any other occasion just that way?

17 A It happened. I don't really remember because
18 I don't pay no mind and stop and say ah, you know.

19 MR. YOUNG: No further questions.

20 REDIRECT EXAMINATION

21 BY MR. SCHAFFER:

22 Q You say you saw Miss Braunig come out of the
23 television room?

24 A Right.

25 Q When did you see her come out?

1 rs21

Harmison - direct

2 facility?

3 A No, I was transferred from the Kennedy Youth
4 Center in West Virginia and spent one week at West Street
5 and then I was doing other work opening the institution.

6 Q How long have you worked for the Bureau of
7 Prisons?

8 A Five years.

9 Q Mr. Harmison, will you briefly describe your
10 duties and responsibilities as unit manager?

11 A As unit manager I am in charge of the various
12 programs on the unit and the operation of the unit.

13 The responsibility that I have are to provide
14 various services and resources to the inmate population.
15 This could be community treatment programs, could be
16 correctional counseling to see that the proper case
17 management is done; that there is coordination between
18 the unit and getting the inmates to and from court.

19 Q You are sort of chief of the unit staff?

20 A Right.

21 Q What are your hours of work, Mr. Harmison?

22 A They vary. 8 to 4 but I have come in at
23 six and worked until six or if I don't leave at 4.30 I am
24 there until eight or nine.

25 Q On the average how many hours a day do you

rs22

Harmison - direct

2552

work at the MCC?

A Approximately ten.

Q Of the hours that you work at the MCC, approximately how many hours do you spent in your office?

A I would say about two hours.

Q Where is your office located?

A On the balcony area on 5 North.

Q Approximately how many hours per day do you spend in the commons area or on the floors of Units 5 and 2?

A Approximately four and a half hours.

Q When the MCC first opened, was the door during the day between Unit 5 North and South kept open to permit people to cross over and see people on the balcony?

A When I took over Unit 5, there was another unit manager the year before I took over. I had to close off the doors because we were having a problem with male and female inmates mingling without supervision.

I came there the middle of July and closed the doors. November of this year the doors have permanently been shut.

(Continued on next page.)

jgal

Harmison-direct

Q And before the doors were shut, did you
issue a memo concerning traffic on the balcony area?

A To eliminate excess traffic there was a
memo put out that inmates on 5 South would not be
permitted on the balcony unless they were in education
classes or dance classes, some supervised program.

Q And has that policy continued now that the
doors have been closed?

A No. They are permitted to go up on the
balcony.

Q When an inmate from the 5 South side wishes
to see you, how is that arranged?

A Usually I will see them on the floor in
the morning, when I do inspections. If they miss
me then, they can contact the case manager. She can
get in touch with me if I'm on the men's side. Or
the officer will contact me and send a particular inmate
over for interview or whatever.

Q You mentioned the case manager. On which
side do the case manager and counselor have their office?

A They are on 5 South.

Q You mentioned time spent on the floor. What
are some of your duties when you are on the floor of
the units?

jga2

Harmison-direct

1
2 A I assist in supervision of the means, the
3 breakfast and lunch, I do sanitation inspections, I
4 do room inspections, make sure that the people who are
5 going to court get downstairs if it's a problem.
6 If there is a medical problem, I take care of it and
7 send people down and find the medication and take care
8 of that.

9 Q Do you have any responsibilities in connection
10 with the administrative grievance form called the BP-9?

11 A Yes, I do.

12 Q And what are those responsibilities?

13 A With the BP-9, when an inmate requests a
14 BP-9, I will sit down and I'll discuss the situation
15 with him. And a lot of times what the inmate feels
16 is a BP-9 situation can be remedied on a cop-out or just
17 by talking to me.

18 If they are having a problem, if there is
19 a problem, any particular minute kind of a problem,
20 say that they were Jewish and they would like to be
21 put on the diet, then, instead of sending a cop-out
22 to the warden, or on a BP-9 to the warden, I would just
23 give them the form for the kosher meal, sign it, and
24 they can see the rabbi and then send it down.

25 Q If you are unable to resolve a problem or

jqa3

Harmison-direct

1 if an inmate insists they want to file a BP-9 to the
2 warden, what is your procedure?

3
4 A Then I give them a BP-9.

5 Q Who else in Unit 5 has BP-9s in his pos-
6 session?

7 A The case manager.

8 Q Can you recall any instance, Mr. Harmison,
9 when Susan Brauniq asked you for a BP-9 and you refused
10 to give it to her?

11 A No, I don't.

12 Q Mr. Harmison, do you have any responsibili-
13 ties with respect to work assignment in your unit?

14 A Yes, I do.

15 Q What are those responsibilities?

16 A Within the unit I have several inmates
17 that are assigned to the unit working in the kitchen.
18 I have an inmate that is assigned to me as a clerk and
19 inmates that do sanitation.

20 Q And directing your attention to the last
21 part of January of January, 1977, when Miss Brauniq re-
22 entered the MCC, did you play any role in her work
23 assignment?

24 A Originally I sent down the work assignment
25 sheet requesting institutional needs for a job.

jq5

Harrison-direct

and sanitation as needed"?

A Okay. In the kitchen, they are responsible for working before each meal, to prepare the kitchen before the food comes up from the downstairs kitchen. When the food comes up, then they take it to the carts. If they are having salads, they place condiments on the table to be selected by the inmates. They put the food in the microwave ovens, heat it and then serve it to the inmates.

Q And after the meal?

A After the meal the kitchen is to be cleaned up, the ovens are to be wiped down and cleaned, the sinks are to be cleaned out.

On the men's side you have refrigerators to be cleaned, the floor has to be swept and mopped.

Q Have you observed this process in the course of entire meal?

A Yes.

Q On how many occasions?

A Every day.

Q And based upon your observation, approximately how long would it take for a woman working on the 5 South unit to carry out these job responsibilities for a given meal?

Harmison-direct

jqa6

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2 A Approximately an hour and 1t minutes.

3 Q Now, a person assigned to the kitchen and
4 unit sanitation as needed, would there be any other
5 responsibilities?

6 A Right. If in fact we needed somebody to
7 clean up the day room area or the educational area, then
8 we would first go to the people that we had already
9 assigned to the unit. We also go to volunteers on
10 the unit. If a girl is working in R & D on the floor,
11 she would be asked, "Would you help vacuum?" or "This
12 room is empty. Could you see that it is cleaned out?"

13 Q For a person who had the job assignment of
14 kitchen and unit sanitation as needed, approximately,
15 in your experience and based upon your observation, how
16 many times per week would they be called upon to do
17 sanitation assignments at hours other than the meal hours?

18 A I would say three or four.

19 Q Three or four times a week?

20 A Yes.

21 Q By the way, Mr. Harmison, have you ever as-
22 signed to any other woman in 5 South the job assignment
23 of kitchen and unit sanitation as needed?

24 A Yes. They are assigned that that work.
25 in the kitchen.

1 jqa

2 Q But they are not locked in.

3 A No. They are locked in for count only
4 and then they are released.

5 Q By the way, were you in the institution when
6 the incident involving Kay Harris occurred?

7 A No, I was not.

8 Q What is the current composition of 5 North,
9 by the way? What types of individuals are housed there?

10 A On the north side I have mainly pretrial,
11 I have a few inmates that are designated that I am
12 waiting to move down to the second floor, and approximately
13 four contempt cases. They are all -- in 5 they are
14 all workers.

15 On 5 North and on 5 South you have a
16 combination of pretrial, post-trial transfers and so
17 on.

18 Q Do you have all levels of custody in both
19 units in terms of close, medium and minimum?

20 A Yes.

21 Q Are any extra guards posted in the women's unit
22 at night because they are not locked in their rooms?

23 A No.

24 Q By the way, you testified that J. R. John-
25 son had instructed you to give Miss Brauniq a shot follow-

A 1527

rs2

Wright - direct

2580

1
2 A My active day-to-day career in the field of
3 corrections covered a period of 42 years.

4 Q Generally what positions, general description,
5 did you hold?

6 A A description of my activities in corrections
7 includes two years as correction officer in the State
8 of Massachusetts, State Prison;

9 22 years as an associate executive director
10 of the American Correctional Association and the
11 Correctional Association of New York.

12 Four and a half years as Warden of the West-
13 chester County Penitentiary in Valhalla, New York; eight
14 and a half years by appointment of the Governor of New
15 York on the New York State Board of Parole and nearly six
16 years as Commissioner of Corrections of the County of
17 Westchester, New York.

18 Q What time period was it that you were
19 Commissioner of Corrections in Westchester?

20 A My period in Westchester, covered from January
21 1, 1969 until July 1st, 1974.

22 Q As Commissioner what were your duties?

23 A My duties as Commissioner included respon-
24 sibility for three separate institutions, namely, a
25 penitentiary operated by the County of Westchester for

rs3

Wright - direct

1 sentenced prisoners serving sentences of up to and
2 including one year on a single sentence.
3

4 A separate institution known as the Westchester
5 County Jail which was for the sole use of pretrial
6 inmates.

7 Q How large was the Westchester County Jail?

8 A The average population during my experience
9 with it was approximately 300 to 325.

10 Q I believe you mentioned there were three
11 separate facilities?

12 A An additional institution was a separate
13 institution for female offenders which was a sort of half
14 and half type of institution, namely a separate section
15 for female detainees or trial prisoners and a separate
16 section for female prisoners under sentence.

17 So that the total operation included three
18 separate units operated by the County of Westchester.

19 Q Since you left the position at Westchester
20 County, have you been active in the field of corrections?

21 A Yes, I have.

22 Q In what capacity?

23 A Primarily as consultant to the Commission on
24 Accreditation for Corrections, which is a project sponsored
25 by the American Correctional Association. My respon-

72 1 jgal

Wright-direct

2 Q Mr. Wright, have you visited MCC?

3 A Yes, I have.

4 Q And on what occasions did you visit it?

5 A I visited it for the full day of April
6 2, 1976 and the day of March 24, yesterday, 1977.

7 Q And how long were you there yesterday?

8 A I was there a period of a little over seven
9 hours.

10 Q And what parts of the institution did you
11 visit?

12 A In general, I visited the entire institution,
13 ranging from the top floor recreation area, roof recrea-
14 tion area, on through to the various floors and areas,
15 including the food service department in the basement
16 area.

17 Q Mr. Wright, there is testimony in this
18 case, and it is stipulated, that inmates at MCC are
19 not permitted to move from housing unit to housing unit
20 on their own, that only for special reasons is
21 there interior movement within the institution, out-
22 side of the housing unit.

23 Have you formed an opinion as to whether
24 that practice is in conformity with accepted correctional
25 standards and practices?

jga2

1
2 A Yes, I have an opinion on that, and it is
3 that it is in accordance with accepted correctional
4 practice insofar as institutions for detention inmates
5 are concerned. I gave emphasis to that fact.

6 Q What are the factors that underlie that
7 opinion?

8 A There are a number of factors, it seems to
9 me, on which such a procedure is based: I think
10 primarily the matter of security and the general over-
11 all control of the flow of inmates is concerned.

12 In my own experience in jail admission, we
13 followed the same concept, that inmates were permitted
14 limited access on their housing floor, not between
15 floors but between their housing unit and day room or
16 recreation area other than the movement of those prisoners
17 from their housing area to, say, recreation areas under
18 escort - this would be the exception - or to various
19 other particular activities. By and large, for daily
20 living purposes, the inmate would be limited to simply
21 facilities available on the floor itself.

22 I think there are a number of reasons, I
23 said, for this. One is security. There is also
24 the factor of protection of the inmate himself or
25 herself - and when I say himself or herself, we obviously

jga3

Wright-direct

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2 should include both sexes; protection from perhaps a
3 disgruntled or opposing co-defendant against whom, or
4 vice versa, he may have given testimony which is not
5 to his liking.

6 This is a matter of separation of parties
7 and various offenses. It makes for much improved con-
8 trol of inmates when this is possible, in that the flow
9 of the inmates concerned is limited from housing area
10 to facilities on that particular area or floor.

11 Q You indicated that at Westchester the use
12 of escorts for inmate movement outside of the housing
13 unit was the practice. That, too, is the practice
14 at MCC. Is that in conformity with accepted correc-
15 tional practices?

16 A Yes, it is, in a detention unit, correct.

17 Q Are there special custodial problems
18 which are associated with detention of pretrial in-
19 dividuals?

20 A I believe there are, and I think that the
21 reasons for that are quite obvious. But to enumerate
22 a few, again it is a matter of security, and in my own
23 experience, for example, using it as an example, and I'm
24 sure it prevails in MCC as well as in the vast majority
25 of detention units, inmates are received from the

Wright-direct

jga

street, so to speak. This is to say that they come in and are admitted only with a commitment paper, which in itself provides extremely limited information.

The next available information on the average inmate coming into a detention unit would seem to be the FBI or the police, the formal police record, and this constitutes primarily the basic information that is available on a jailed inmate at the outset of his confinement.

This, of course, indicates that the staff of the institution is without the benefit of the pre-sentence report, is without the benefit of in depth knowledge of the offender himself. And until such information is available, it behooves the admission to exert a reasonable amount of control of his movements, whether it be on a floor or whether it be from a floor to a floor or to a recreation area or whatever movement is involved within the institution.

So the escort principle is, in my opinion, accepted practice.

Q Have you formed an opinion as to the level of custody which is practiced at MCC?

A Yes, I have.

Q And what is that opinion?

1 jqa

2 A My opinion is that from the standpoint of
3 the building itself, and in that terminology I am
4 referring particularly to the outer walls, or the
5 perimeter of the institution, it is maximum security.
6 From the standpoint of the housing areas and the
7 degree of freedom that inmates of that unit are privi-
8 leged to have, it constitutes, in my estimation, a
9 sort of half and half between minimum and medium
10 security.

11 O What factors are important in considering
12 whether a form of confinement is minimum, medium or maxi-
13 mum?

14 A It seems to me that the degree of security
15 which we have just indicated is between, perhaps just
16 for common usage, minimum and medium. That is based
17 on the fact that there is freedom of movement within
18 or on each of the floors of that particular unit.

19 In other words, an inmate is permitted to
20 come and go from his particular living area, room, at
21 any point, with limited exception, and that exception
22 is for the period of lock-in for the night period.

23 He has perfect liberty to utilize the
24 facilities available to him on the floor, a wide
25 range of facilities, from exercise equipment, television,

A 1534

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Wright-direct

2590

to usual passive recreational facilities, attendance at classes, closed-circuit TV, upon request, consultation with a wide variety of specialists, all at his disposal, generally speaking, at any time he so desires to utilize those facilities and that type of personnel.

I would also add to that that it seems to me that the lock-in period to his advantage is limited. In other words, lock-ins ranging from a weekday lock-in from approximately 11 p.m. to 6:30 a.m. and a weekend lock-in from 1 a.m. or, at some points, from 1:30 a.m. to 6:30 a.m. or thereabouts, is in my opinion unusual in a detention institution. This is to say that at MCC the inmate seemingly has additional privileges than would ordinarily be the case in a typical jail today.

Q There is testimony in this case that the MCC practices the most restrictive form of confinement in a detention facility. Do you agree with that?

A No, I do not. Because the typical detention facility is commonly referred to as the county jail, and county jails are notoriously, in this country, limited in the providing of privileges or freedom of movement -- not necessarily or/and freedom of movement -- privileges in the sense of program facilities.

A 1535

jqa-

Wright-direct

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Program personnel are relatively few and far between across the board as far as county jails and true detention units are concerned. And I daresay it is the rule rather than the exception that the inmate in the typical county jail today spends a great majority of his time locked in, locked in his cell, locked in a room, particular a cell, as contrasted to the general type of room facility that we see in the MCC.

Q It is stipulated that at MCC there are no common facilities, indoor facilities, such as interior gym, chapel or auditorium. Do you have an opinion as to whether the absence of those facilities is in conformity with accepted correctional practices?

A It is in conformity with correctional practice, yes, because one must be concerned with and take into account, in a detention facility, the relatively short duration of time that an individual inmate spends therein, consideration of such factors as frequent visitation, of relatively frequent appearances in court, and other calls by attorneys, and so on, with require the presence of the inmate outside of the area, and that the availability of facilities such as you suggest, namely, a major chapel facility or an indoor gymnasium or facilities of that type, are not required

1 jga Wright-direct 2592

2 in a detention unit.

3 Q When you visited MCC, did you have occasion
4 to go up to the roof area?

5 A Yes, I did.

6 Q And have you formed an opinion as to whether
7 that roof area is a suitable area for outdoor recrea-
8 tion?

9 A Yes. My opinion is that that particular
10 roof area is sufficient, again, in consideration of the
11 short duration, the average length of stay of the in-
12 mate in that institution, which is approximately,
13 according to their records, 26.-fraction-of-a-day,
14 namely, 26 days-plus.

15 It is also my understanding that that
16 figure, as I reviewed it, includes some inmates who are
17 there under sentence, which would in a sense tend to
18 increase that average length of stay, that is to say
19 that our concern on behalf of the trial prisoner, the
20 detainee per se, and that that recreational facility,
21 namely, the roof area, is sufficient for that use.

22 I think we find that generally the rule
23 of thumb is that a recreation area should accommodate
24 roughly one-third of the population for which it is
25 designed. Let me hasten to say that that roof area

19a

is not designed for total use by all inmates at any given time. That would be highly unthinkable in terms of administrative practice and procedure.

It is designed, as I understand it, as most recreational facilities in detention institutions are concerned -- it is designed for use by limited groups at given periods of time, namely, a floor or a cell block, if that were the case, or a given area.

So that at no point should we consider the recreation area at MCC is at any point going to handle the total population.

Therefore the rule of thumb is that in the design of such units, if the area can accommodate roughly one-third of the population, that would seem to be sufficient, and I think that that holds true pretty much across the board.

THE COURT: Mr. Corsi, I don't want to interrupt, but the statistics keep being mentioned. It strikes me that it may be useful, and I want to be sure that the record contains this, to have those statistics broken down by categories of inmate. Are they already?

MR. CORSI: Yes, your Honor.

THE COURT: That is to say, average stay

1
2 THE COURT: Are you talking about jail
3 facilities now?

4 MR. CORSI: Yes, your Honor.

5 THE COURT: All right. Overruled.

6 A It is my opinion that the schedule that is
7 available to inmates at MCC exceeds the general avail-
8 ability of outdoor recreation for the typical detention
9 prisoner today. As a matter of fact, it exceeds the
10 amount of recreation that we were able to provide in
11 Westchester County. This goes back now nearly three
12 years. What has transpired since then I'm not compe-
13 tent to make comment upon.

14 In my experience, we are able to pro-
15 vide outdoor recreation for a period of an hour or per-
16 haps an hour and 10 minutes five days a week. At MCC
17 the schedule provides, as you have indicated in your
18 question, one hour for at least seven days a week, and
19 I understand from conversation with various employees
20 that even if one single inmate desires to utilize
21 the roof recreation area, that is his privilege.

22 So that it is not governed upon the basis
23 of a minimum of five or ten required before anyone
24 can have access to the recreation area.

ars

Q Laying aside the comparison with other detention facilities, do you have an opinion as to whether that schedule is a suitable one for a pretrial detention facility?

A Yes, I would say it is suitable. Again, qualified by the fact of the high turnover of population, coupled with the low period of time served in the unit.

Q Have you formed an opinion as to whether the glass enclosed rooms that are off the multi-purpose or common area within the unit, and that room is in all of the units except Units 2 and 3, whether that room is an appropriate space for indoor physical exercise?

A Again, based upon the premise that probably not more than one-third of the population could ever be expected to utilize that facility at any given time, it is my opinion that is a sufficient space.

Q There is evidence in this case that the visiting schedule for the units at the MCC provides a visiting period scheduled every day in blocks of three hours and that within that schedule inmates are permitted up to three visits per week.

Do you have an opinion as to whether that schedule is in conformity with accepted correctional practice?

rs3

Wright - direct

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2 you inquire about gym facilities and chapels and
3 auditoriums in the Bronx House and the Brooklyn House
4 and so on. We have been taking that for 18 days we
5 have been at it until now so your new thought is too new
6 for me. I don't assimilate new thoughts that quickly
7 and I don't think we ought to.

8 The objection is overruled. Go ahead.

9 Q How does that visiting schedule compare with
10 visiting schedules at other large urban detention
11 facilities or detention facilities of comparable size?

12 A To my knowledge it compares favorably and in
13 many instances it seems to me that exceeds the usual run-
14 of-the-mill type of schedule permitting visits in
15 detention institutions.

16 Again, I would refer to the practice in
17 Westchester County which is my most recent daily admin-
18 istrative experience in detention units at that location
19 and, again based on the fact that that was nearly three
20 years ago and beyond, we were unable to grant that kind
21 of latitude in inmate visiting.

22 Q What kind of considerations, based on your
23 knowledge and experience, must an administrator consider
24 when devising or attempting to devise a visiting
25 schedule?

rs4

A Quite obviously the administrator must consider the physical facilities available and the personnel available.

This is to say, had we had our druthers, as the common phraseology puts it, we would undoubtedly utilize additional visiting privileges calling for additional visiting. Certainly I would have done that in Westchester County had we had the space available and had we had an adequate number of personnel to provide appropriate supervision.

Therefore, the granting of visiting privileges is based in no small measure on what you have available to work with, not only physically in terms of available space but also in terms of personnel available.

Q Do you have an opinion as to whether it is in conformity with accepted correctional practice to limit visiting to specific rooms set aside for that purpose rather than to permit visiting within the living area and in the case of the MCC, within the multi-purpose area of each of the units?

A I certainly have a definite opinion on that and that is visiting is provided, to my knowledge in practically every institution I ever visited over the years, in a separate area. That is, an area separate

rs5

Wright - direct

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2 from the immediate living section of the unit.

3 Q What are the considerations that underly that
4 type of visiting arrangement?

5 A Again, primarily a matter of security and
6 controlling of personnel. The problem, if it were a
7 policy to permit free visiting so to speak within the
8 living area of an institution -- let us say the MCC -- if
9 it was privilege granted to inmates of that unit to have
10 visits within their own living rooms, for example you
11 call them rooms or in other types of institutions in
12 their own cells, I think it is only too obvious the kind
13 of problems that would result.

14 Undoubtedly forms of sexual irregularity,
15 problems of contraband of course and then other problems
16 based primarily on the degree of security desired in an
17 institution of that kind.

18 Likewise, there are other types of problems
19 that would become apparent. We might call them in a
20 sense the psychological type of problem or what-have-you.
21 In other words, if I am confined in a jail without the
22 advantage of having immediate family or friends and do
23 not have the privilege of visits simply because no one
24 cares to visit with me, if my associate or next door
25 neighbor so to speak, the man or woman in the next cell,

rs6

Wright - direct

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2 does have that privilege it creates problems.

3 I think that perhaps as common ordinary
4 citizens we could, the best analogy would be that of
5 laying in a hospital bed in a ward or even in a semi-
6 private room and be wondering what your family may or
7 may not be doing when the other person sharing that room
8 has unlimited visitors.

9 It creates a number of human problems that
10 must be taken into consideration.

11 It would be difficult to control, for example,
12 small children roaming the wide and relatively unsuper-
13 vised larger area involving living rooms and day room
14 space, et cetera.

15 The whole wide area that is covered by the
16 floor of that MCC.

17 I would certainly as a long time correctional
18 administrator, take a very dim view of permitting visits
19 in an area other than a separate especially designated
20 area with a reasonable degree of supervision.

21 That area does not have to be a designed
22 visiting room. It could be a multi-purpose room, it
23 could be a designed visiting room. It could be as we
24 had in Westchester in either separate booths that have
25 now been dismantled, by the way, but in other institutions

1 rs7 Wright - direct 2602

2 in Westchester it could be a makeshift room or a table-
3 type of visiting in the dining facility.

4 Q Mr. Wright, I am showing you what is in
5 evidence as Exhibit CC, which is a schedule of education
6 and recreational programs at the MCC. I ask you to just
7 briefly review that document.

8 A I have both seen and reviewed this document
9 on other occasions.

10 Q Based upon your review of this document, have
11 you formed an opinion as to how this schedule of activity
12 compares to the activities of similar nature, recreation
13 and educational activities, which are offered at other
14 large urban detention facilities?

15 A My quick response to that question is that it
16 far exceeds the general type of program of activities,
17 education, recreational and other types of programs as
18 we would observe them in a typical detention facility
19 today.

20 Q I also would like to ask you to just briefly
21 scan through what has been marked in evidence as
22 Respondents' Exhibit DD?

23 A I have reviewed this on a prior occasion and
24 I also observed one of the closed circuit television
25 tapes that is described in that document.

1
2 Q Based upon the information in Exhibit DD
3 and your experience in the field of corrections, are you
4 familiar with any other detention facility which offers
5 such a program?

6 A No, I am not.

7 Q The MCC policy with respect to room searches,
8 and this has been stipulated to in this case, is that
9 during a formal unit search inmates are generally not
10 permitted to view the search of their rooms and that
11 during less formal searches of rooms, inmates may be
12 permitted to observe such searches.

13 Do you have an opinion as to the acceptability
14 in terms of correctional practice and standards of this
15 procedure?

16 A Yes. My opinion is that that is in keeping
17 and accordance with acceptable operating procedures and
18 practices in detention institutions.

19 Q What factors underlie that practice and policy
20 in detention facilities?

21 A Again, it is a matter of the degree of security
22 required. In terms of a formal search which would
23 include an in depth type of search of a given area, as
24 contrasted to an occasional search or spotcheck basis
25 or for some particular reason of a single inmate's room

rs9

or cell, the requirement that prisoners not be in the immediate area obviously has its basis again in the requirements of security.

It is quite obvious that if a group of officers start a searching process of a housing area at the MCC, if it be a corridor or an area of rooms or in a typical jail if it were a cell block, unless all prisoners are removed from that immediate area, there are a wide variety of opportunities for the confiscation of contraband by prisoners who may have such in their possession and cells.

It can go down the toilet or out the window, swallowed, a wide variety of methods of confiscation of contraband.

Therefore, primarily for security reasons and primarily for the control of a searching process so that prisoners are not constantly gathered around a particular inmate's room or cell to see what is going on, common practice dictates that a group search should be conducted in that manner.

Q It is stipulated in this case that the Federal minimum wage is not paid to inmates employed at the MCC.

Do you have an opinion as to whether that

rs10

Wright - direct

practice and policy is in conformity with accepted
correctional practice?

MR. MUSHLIN: I would object, that is a legal
question as to whether or not inmates are entitled under
the minimum wage law.

MR. CORSI: I am just attempting to elicit
what the accepted practice in the field is.

THE COURT: You can argue about the
materiality of that. I am not sure about it but let's
hear it.

A It is my opinion that the minimum wage is not
paid to the vast majority, if in fact to any detention
prisoners at this time.

I would add to that by saying I am not
personally familiar with any jail that pays a minimum
wage to inmates. As a matter of fact, I am not familiar
with but very, very few jails that even pay a detention
prisoner a token payment.

Q It is stipulated that at the MCC inmates are
generally not permitted to possess personal property
except for a limited number of items like a wedding band
and an inexpensive watch or radio purchased at the com-
missary;

Except on special occasions inmates are not

rsll

Wright - direct

permitted to receive packages of either personal property or food packages from outside the institution.

Do you have an opinion as to whether these practices are in conformity with accepted and good correctional practice?

A Yes. It is my opinion they are, they do conform to accepted correctional practice, particularly insofar as detention institutions are concerned.

Q What is the basis for your opinion?

A Well, there are many bases for that opinion. There are many reasons for it, not the least of which again is the item of the whole overriding, overall factor of security.

Again, there are many personal problems that arise, many that may or may not be directly related to security and in some respect quite comparable to the matter of visiting that we just discussed.

First of all, the possession of a wide variety of valuable items by an inmate opens up obviously the possibility of theft of those items by other inmates and in rare occasions perhaps by unscrupulous employees or whoever there may be in the immediate area.

I can conceive of a person coming in with an expensive diamond ring, for example, and being permitted

1 to retain that ring during the course of his incarceration.

2 This would be quite foolhardy it seems to me
3 on the part of a jail administrator to permit that kind
4 of practice. The first thing that arises is, as I
5 have said, the matter of theft possibility.
6

7 You then have the possibility of many other
8 inmates who have no possessions or very, very limited
9 possessions, least of all a diamond ring or an unusual
10 amount of money or an expensive watch or what-have you.
11 This creates again a series of what we might call human
12 problems, you have it and I don't, and that always creates
13 a very difficult situation in the close living that would
14 be experienced in a detention unit.

15 I would certainly not be in favor of an
16 unlimited privilege of having unlimited personal
17 possessions.

18 It seems to me too that is in the area of
19 the protection of the inmate. We are protecting him,
20 in the sense we are precluding the possibility of theft
21 of that piece of valuable property.

22 Q With respect to receiving packages either
23 of personal property or food packages from outside the
24 institution, is the prohibition on the receipt of such
25 items in conformity with accepted correctional

rs13

practice?

A I would say generally yes, that is in conformity. In my own opinion again we operated in that manner, limiting packages to a certain time of year, for example the best illustration is the Christmas period.

Limiting the contents of those packages to items of necessity.

It seems to me too if the jail administrator permitted the admission of unlimited food items, for example, most of which would be in the form of cooked or baked goods probably or raw material such as meat, uncooked foodstuffs, that this immediately serve to create an ever increasing problem of sanitary control, providing for perhaps rodents, mice, insects, roaches, problems of pest control.

Q What if any security problems would be associated with the receipt of packages?

A Probably the most common problem of the admission of goods, whether it be the traditional file in the cake kind of situation that is well known to probably everyone, probably more important and a more practical kind of problem that exists certainly in metropolitan areas is in the introduction of prescription medications, narcotics, marijuana, et cetera, that can

Wright - direct

rs14

be introduced for example in heels of shoes, seams of clothing.

I think the jail administrator today -- certainly I have experienced at least the limited introduction of contraband by those various devious methods and this simply provides another opportunity for the breakdown of security in an institution.

Likewise, the reverse of the coin is as we have said in the case of visitors and cash and personal belongings, it creates the age-old problem of you have it and I don't have it. I don't think this needs any further elaboration.

Q It is also stipulated in this case inmates are permitted to spend up to \$50 per month at the commissary and within that \$50 per month limitation, on a given weekday are permitted to spend up to \$15 of that \$50 limit.

Is this spending procedure -- have you formed any opinion as to whether this spending procedure at the commissary is in conformity with accepted correctional practice?

A Yes, I think that is a reasonable procedure, a reasonable amount of money in general.

I would not say a minimum of \$45 or \$50 or

Wright - direct

rs15

\$52 or \$53. In the area of \$50 is in keeping with the gradual rising price of items, whether commissary items, it is true of everything and that is a reasonable maximum amount.

\$50 a month with a limitation of say \$15 in any given week and again you have the same problem existing that if I have the wherewithal to buy let's suppose the niceties of life, if it can be termed that within a jail and you can't, we immediately create another problem.

It seems to me that too if an inmate is permitted to have unlimited privileges of purchase in a commissary, that this creates another problem and that is the problem of resale for a much higher markup to certain inmates.

There are many perhaps minor yet very important problems in operating from an administrative standpoint that could result from unlimited commissary privileges.

(Continued on next page.)

Wright-direct

jgal

Q Inmates at MCC are not permitted to possess more than \$5 in change. Do you have an opinion as to whether that limitation is in conformity with accepted correctional practice.

A I think it is in conformity in an increasing number of institutions, of detention institutions. Quite obviously the cash that is available in MCC and in other comparable units, that is, detention units per se, is for purposes of telephone calls.

I think that's within reason and in keeping with accepted practice.

Q What are the problems, if any, associated with the possession of money within an institution?

A Well, of course, the usual problem that readily comes to mind is that of gambling. I think everyone admits and readily accepts the fact that gambling is not based on the availability of cash alone, but certainly in a penal institution the availability of cash would promote the possibility of petty gambling, which leads to losses on the part of some and the requirement that those losses be paid and the typical, traditional problems that result from welchers and gambling bets and so on.

In my opinion, it is far more desirable not

1 jga

2 to have cash, certainly cash in unlimited amounts,
3 available in hands of prisoners in a unit of
4 this kind.

5 MR. CORSI: Thank you, Mr. Wright. I

6 have no further questions.

7 CROSS EXAMINATION

8 BY MR. MUSHLIN:

9 Q Good morning, Mr. Wright.

10 A Good morning, Mr. Mushlin.

11 Q Mr. Wright, when you testified this last
12 fall in the Rhem matter, you testified on behalf of
13 the City of New York, did you not?

14 A Yes, I did.

15 Q And that proceeding involved the city's
16 application to reopen the Tombs, didn't it?

17 A Yes, it did.

18 Q And you testified that the city plan was an
19 acceptable plan?

20 A I believe I did.

21 Q Now, in the Benjamin matter, you also
22 testified in behalf of the city, didn't you?

23 A Yes.

24 Q And that case involved the House of Detention
25 for Men on Rikers Island, didn't it?

A 1555

Wright-cross

2624

jga

could be conceivable that additional facilities should be available, yes. But that is not the case in a --

Q Right. Let me ask you hypothetically why might be necessary.

Would an indoor gymnasium be necessary?

A Not necessarily, no.

Q I see. This is if it is longer than a year or longer length of stay.

What about movement of the housing floors?

A Yes, I think it would be desirable in what we agree is a long term, say a year or more, something of that sort. Is that what you are implying.

Q Well, yes. Let's take that for a moment.

A Yes.

Q Okay. Would an auditorium or chapel be necessary?

A I would say an auditorium would be desirable.

Q I'm asking would it be necessary, Commissioner?

A No, it wouldn't be necessary.

Q A chapel?

A No.

Q Classrooms?

A Yes.

A 1556

Wright-cross

2625

jga

Q What about a law library and a general library that a person can go to and sit down and use books?

A Assuming we are still on the premise that we are talking a year or more, in round figures, of detention, I would be inclined to say yes.

Q Okay. Would the outdoor facility you saw be adequate if the length of stay was a year or longer?

A It would be adequate. It would be undoubtedly desirable if the --

Q Okay. So then you are saying that if it is anything less than one year -- you went on the assumption the length of stay was 26 days. What if the length of stay was 11 months at the MCC? Is it your view that the facilities that you saw there and the amount of movement you saw there is acceptable and adequate?

A I would respond to that by saying this: that if there were a vast majority of inmates serving 11 months, that I would prefer an increase in facilities.

However, based on observation of some statistical reports, that is not the case.

Q I know that. But I would like you to

A 1557

Wright-cross

2626

jga

assume hypothetically, just assuming now that that were the case, is it then your -- and I think I understand your testimony to be that more would be necessary --

A Yes.

Q -- now let me get one more figure before you. Assume that the average length of stay is more like four or five or six months rather than one month, and that large numbers of people would stay at the MCC for that long. Is it your view that the facilities and the program, that is to say, the confinement in the modular units, would be adequate?

A Yes, it is.

Q Now, it is true in corrections, isn't it, that the way a facility operates is as important as the architecture of the facility?

A Well, I'm not so sure you can in all cases relate the two or go hand in hand, if I understand the direction of your question.

Q Yes. The direction of my question is, isn't it true in corrections, among people active in the field of corrections, that the program, the operation of the facility, goes hand in hand with the architecture of the facility?

1 jga

2 of the major problems is idleness, from an administra-
3 tive standpoint, particularly in a sentence institu-
4 tion.

5 Q What about in a detention institution?

6 A In detention institutions it is a different
7 situation, because I think it undoubtedly must have been
8 brought out time and time in this general trial or hearing
9 that detention prisoners are not required to perform
10 work. In other words, they must volunteer, which is
11 well known, and they must likewise sign a waiver of re-
12 sponsibility or whatever at that point.

13 Q It is true, isn't it, that among inmates
14 that you have known they prefer privacy and would
15 rather be in a cell than in a dormitory?

16 A I would say on a general basis that is
17 true. At the same time, I would have to add that
18 there are -- I have had contact with numerous inmates who
19 desire the congregate type of living, namely, a dormi-
20 tory setting.

21 I would think that they are in the minority,
22 but there are those who do not care to be locked in at
23 any given period without free accessibility to their living
24 room.

25 Q And that is a minority, is that right?

jga

experience on this very point, eight long months of it, as a matter of fact, that in the day in which we are living and under the provisions of Equal Opportunity and other variety of human rights legislation, that this is a matter over which administrators have very little, if any, jurisdiction.

In other words, we don't at this point ask are you male or female. We accept the fact and certainly within state and local operations it is now virtually a mandate. We are unable, and I was personally unable, to preclude females --

MR. MUSHLIN: Your Honor, I don't want to cut him off, but I think it would be --

THE COURT: I can understand why he is answering that way.

But now that you've said that, Commissioner, assume that there are no legal compulsions of the kind you were just talking about, and just as a matter of correctional policy, which you are free to make, answer his question.

Would you think it is acceptable to have single male guard in a modular unit occupied only by females?

THE WITNESS: My personal reaction to

jga

Wright-cross

2635

that is no, it is not acceptable. And yet at the same time I must qualify that response by saying that, as is well obvious, I'm of a school, of an older generation perhaps, that has been raised --

THE COURT: I'll make a judgment about what school you are of. Let's just answer the question.

Would you answer the same way if it were the other question, that is, one female guard over a male unit?

THE WITNESS: That is my opinion.

THE COURT: Okay, go on.

Q Now, you talked about the programs at the MCC. It is true, isn't it, that you don't know how many people are actually in each of those programs?

A No, I did not make a survey of that.

Q Right. Now, you talked about in-visiting, having visiting in a room designated for that purpose. If I were to tell you, Commissioner, that Warren Taylor had on occasion at the MCC allowed open houses, where he allowed visitors to come onto the modular units, would you advise against that?

A No, I would not, because I also allowed that same privilege on rare occasions.

1 jga

2 Q Where? At Westchester?

3 A Yes.

4 Q And how did it work out?

5 A With added personnel, which is required
6 for that type of procedure, considerably, in consider-
7 able numbers of added personnel, we have had no tremen-
8 dous problem, we had no great problem with it.

9 Q And did you see any benefits to the inmates
10 or to the staff in that? Or not?

11 A I would have to say yes and no. I observed
12 that some families were not comfortable visiting in
13 the interior of a detention unit, in that case a peniten-
14 tiary unit. I noticed, on the other hand, that inmates,
15 a number of inmates, did prefer it. But all in all,
16 it was not overwhelming to the point where I would
17 care to advocate that type of visiting on a routine
18 basis.

19 Q Now, when you say people weren't comfortable
20 about visiting on a penitentiary unit, was your facility
21 of the standard design of cell at Westchester?

22 A Say that again?

23 Q Did you use inside cells at Westchester?

24 A In the jail? You mean inside from an
25 architectural point of view.

jga

Q Yes, sir.

Q Without windows?

Q I'm not talking about without windows now.
I'm talking about with bars and open grilles.

A Front, grille front?

Q Yes.

A Yes.

Q Well --

A As a matter of fact, we used both.

Q You talked about comparisons of conditions
between MCC and other detention facilities. Isn't
it your view that in the history of this country, the
jails in this country or the history of the jails
in this country has been scandalous?

A Well, I'm not so sure I would say scandalous.
There have been terrible. Scandalous would be adequate
in some respects, yes. If it is general usage of
that word you are referring to.

Q Well, let me just ask you. In the Tombs
case, let me ask you if this question was asked and you
gave this answer, page 62, the bottom of the page:

"Q Let me ask you this. This article points
out a discussion by Richard A. McGee, in an article
called Sick Jails, which appears in the Federal Pro-

75 am

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ars

Wright - cross

2

Q Do you know what the capacity at the MCC is?

3

A Only the approximate figure; approximately

4

500.

5

Q Do you know whether or not that facility is

6

overcrowded now or ever was?

7

A I would say in answer to that that it is my

8

understanding that the count in the institution this

9

morning is 523. I would not term this overcrowded.

10

I would have to say it is in somewhat slight

11

excess of capacity but not in our general thinking of

12

crowded jails and prisons, it is not overcrowded today.

13

Q Let me ask you this:

14

Assume that in an area in your prison designed

15

for a certain number of people, say 54, and more people

16

than that were put in there, like 120.

17

Would you consider that overcrowded?

18

MR. CORSI: Objection, outside the scope.

19

THE COURT: I will allow it.

20

Q Shall I repeat the question?

21

THE WITNESS: Yes.

22

Q Assume that you have an area in a jail that

23

you were administering that had a capacity of 54 people

24

and 120 people were given to you to place in that unit.

25

Would you feel that was overcrowded?

Wright - cross

rs2

1
2 A In that particular unit, yes, I would have
3 to feel it was overcrowded.

4 Q I gather that would create some problems for
5 the people that have to live in that space in your
6 experience as an administrator?

7 A Yes.

8 Q Let me ask you this:

9 Is it admitted in your view to house people
10 in areas that weren't designed for housing like a day
11 room or balcony?

12 A No, not necessarily. I have had to be
13 part of that kind of situation. While it may not be
14 desirable I found in my own experience that to do that,
15 to follow that sort of routine is for a temporary period.
16 We have had to use, in my experience, day rooms for
17 additional overnight dormitory makeshift facilities.

18 Q Is that an acceptable correctional practice?

19 A It has to be. It has to be a policy whether
20 or not it is totally acceptable by the reasoning and the
21 feeling of the correctional administrator is probably
22 another matter.

23 But one is forced by the mere overwhelming
24 numbers, there is no alternative.

25 Q As an administrator you have to accept whoever

1 rs3

Wright - cross

2 is given to you?

3 A Right.

4 Q I understand that.

5 Commissioner, if you had within a facility
6 women in rooms that didn't have toilets in them would
7 you conclude that it was proper to lock them in the
8 room for punishment? Or let me say it another way:

9 Would you have any problem with doing that?

10 A There are quite obvious problems of the
11 limitation on the immediate use of the sanitary
12 facilities.

13 However, the availability of personnel would
14 seem to be such that the problem could be resolved
15 without great undue difficulty.

16 Q Is it true that your jail in Westchester you
17 had segregation units?

18 A Yes, we did.

19 Q Those units had cells and in each cell there
20 was a toilet?

21 A Yes, there was. May I expand on that a
22 moment?

23 Q No, that is enough right now, Commissioner.

24 Is it true that in recent years metal detectors
25 have been developed to the point where many correctional

rs5

Wright - cross

A Apparently, yes.

Q Now, in your view when evening comes and you lock the detainees or inmates into their cells, do you think it is important to have a guard who is, if not within the visual sight of all the inmates, at least can hear anything if an emergency happens and he is called for assistance?

THE COURT: Mr. Mushlin, I think we are going to stop going outside direct now. You had expert testimony on your case.

MR. MUSHLIN: That was my last question.

THE COURT: That turned out to be one past your last.

Q Isn't it true, Commissioner, that correctional administrators prefer not to construct skyscraper type detention facilities?

THE COURT: No, you are right the first time.

REDIRECT EXAMINATION

BY MR. CORSI:

Q Are there problems associated with assigning detainees to job positions or work positions within a detention facility?

A Yes, there are.

Q What are some of those problems?

rs6

Wright - redirect

1
2 A In the first place, the first problem is to
3 obtain the acquiescence of the detainee to be so
4 assigned.

5 Q Beyond that are there any problems?

6 A The problem would be again, as I stressed
7 numerous times the matter of the custody and the supervision
8 of that particular inmate. Namely, the placement of
9 the detainees in the kitchen operation where there is a
10 certain degree, there has to be a certain degree of
11 cleanliness and careful supervision of preparation of
12 food and so on.

13 It would be difficult to assign just the
14 ordinary detainee. This would require some degree of
15 knowledge of that inmate.

16 MR. CORSI: I have no further questions.

17 RECROSS EXAMINATION

18 BY MR. MUSHLIN:

19 Q Commissioner, in Westchester isn't it true
20 that you did employ detainees in maintenance and food
21 service?

22 A In the Westchester County Penitentiary we
23 employed or assigned I should say two detainees who were
24 known to be there for rather lengthy periods of time and
25 who on frequent occasions had been there on other previous

1
2 M A R S H A L L H A I M E S , called as a witness
3 by the respondents, being first duly sworn,
4 testified as follows:

5 DIREC EXAMINATION

6 BY MR. SCHAPPER:

7 Q By whom are you employed?

8 A By the Federal Bureau of Prisons at the
9 Metropolitan Correctional Center in New York.

10 Q What is your position there?

11 A I am Social Service Science Rsearch Analyst.

12 Q Will you briefly describe what your respon-
13 sibilities are in that position?

14 A I am supposed to be collecting records from
15 various parts of the institution from various departments
16 and compiling materials which can be used by department
17 heads, by the central office and by possibly interested
18 groups from the outside.

19 Q Would you briefly describe your educational
20 background?

21 A I have a Master's degree in psychology and
22 I have a doctorate from the University of Maryland.

23 Q Do you have any training or background in
24 statistics?

25 A Yes.

A 1569

2649

rs10

Haimes - direct

1 Q Approximately how many hours of training do
2 you have?

3 A Approximately 15 credits in statistics as well
4 as about 9 in experimental design which is a subcategory
5 of statistics.

6 Q In the course of your employment at the MCC,
7 Mr. Haimes, have you had occasion to do a study of the
8 length of confinement of the inmates at the MCC?

9 A Yes.

10 Q When did you do that study?

11 A It was August 19 of 1976.

12 Q Mr. Haimes, I show you Respondents' Exhibits
13 TT and UU for identification and ask you if you can
14 identify these documents?

15 A Yes, I can.

16 Q What are they?

17 A The one marked TT is a study on the length of
18 confinement, it is group data as to the length of confine-
19 ment of discharged inmates at the MCC.

20 Q Did you prepare that document?

21 A Yes, I did.

22 Q Could you explain how you went about preparing
23 that document?

24 A We collected 1443 records from discharged

rsll

Haimes - direct

1
2 individuals, Form 31's or what are called the commitment
3 summaries.

4 This amounted to approximately one-quarter
5 of the total number of commitment summaries that were
6 held by the MCC at the time; almost the entire number
7 of summary commitments, commitment summaries that we had
8 since the place opened up.

9 Q That would be from what date to what date?

10 A I think it went -- the last date was August
11 I believe and the beginning date was August of the begin-
12 ning of that year 1976 or the end of 1975.

13 Q Mr. Haimes, referring you to Respondents'
14 Exhibit UU for identification, does that document refresh
15 your recollection as to the dates of the commitment
16 summary sheets you examined?

17 A Yes, it is from August 2, 1976 through and
18 including August 13, 1976.

19 Q Mr. Haimes, I believe you previously signed
20 an affidavit in this case filed with the Court on October
21 20, 1976 in which you indicated that these studies covered
22 the period from August 2, 1975 to October 13, 1976.

23 Is that inaccurate in the affidavit?

24 A Yes, that is inaccurate.

25 Q It should be August 13, 1976?

1 fsl2

Haimes - direct

2 A That is correct.

3 Q You examined these commitment summary sheets
4 over a period of approximately a year?

5 A That is correct.

6 Q Of the commitment summary sheets for all of
7 the people who were discharged in that year, how many
8 commitment summary sheets did you pull, what percentage
9 of all of them?

10 A About 25 percent,

11 Q How did you select the files to pull?

12 A We chose every fourth one, went alphabetically
13 down in a sequential manner.14 The idea there was to try to get an enhanced
15 selection from all parts of the alphahet so there would
16 be no biasing.17 Q Can you explain to us how did you take your
18 selection from the discharged population rather than the
19 current population as of that date?20 A We were trying to get a very large sample,
21 the larger the sample the more reliable the figures tend
22 to be over time.23 Also, the mean is a reliable figure so we
24 were trying to get the utmost reliability by the large
25 number of samples.

rs19

Haimes - direct

to 60 days or so you have about 89 percent of the population. That means if I can state it more clearly, that 89 percent of the population are here 60 days or less, I mean by that at the MCC.

Q Mr. Haimes, have you also had occasion to conduct a study of the level of bail of the inmates at the MCC?

A Yes, I have.

Q When did you conduct that study?

A That was done in March of this year, it was the 19th I believe -- the 17th and 18th.

Q Could you describe how you conducted that study?

A We visited the Southern District Marshal's office, the Eastern District and the New Jersey offices of the United States Marshals Service.

Q What did you look for?

A We requested that all the people that they had on record at the MCC be presented to me so I could make copies --

Q You made photocopies of what?

A Photocopies of the District of New Jersey and t all turned out to be pre-sentence people at the MCC hat were in their records in New Jersey and for the

rs21

Haimes - direct

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2 A It reduced the bail to \$66,689.35.

3 Q These statistics would indicate, would they
4 not, people who later on were going to make bail as well
5 as people who might stay for longer periods of time?

6 A That is right.

7 Q These were all the pretrial people you had
8 on this particular day?

9 A As indicated to me by the Marshals Service,
10 right.

11 MR. SCHAFFER: We offer Respondents' Exhibit
12 VV into evidence.

13 MR. YOUNG: No objection, your Honor.

14 (Respondents' Exhibit VV for identification
15 received in evidence.)

16 Q Mr. Haimes, in connection with your research
17 activities, have you had occasion over a period of time
18 to compute the averawge age of the inmates at the MCC
19 as indicated on their commitment summary forms?

20 A Yes, I did.

21 Q Approximately what is the average age?

22 A 32.7 years.

23 Q As of when did You arrive at that figure?

24 A I believe that was August 19, 1976 study.

25 MR. SCHAFFER: Thank you, Mr. Haimes, I have

1
2 year or less?

3 A Yes, that is true, and had gone out.

4 When you say I limited it, that is the time
5 period that we actually had performed the study. So in
6 other words, that is what we had available at that time.
7 In other words, this is what limited me.

8 Q It isn't what you had available. There
9 were people who entered the institution and went on or were
10 still there, isn't that correct?

11 A Yes, right, they would not have been included
12 in the study.

13 Q People who stayed the longest time at the
14 MCC would not be included in that average you calculated?

15 A Not this small number, that is right.

16 Q Were the people in the PC unit included in
17 that survey?

18 A They would have been included in the survey
19 and under different categories. In other words, they
20 would be spread out among the categories rather than have
21 their own category.

22 Q What happened to people say that may have
23 entered the institution, left for a short period and
24 then come back and may have stayed another period of time
25 and then left and had done this several times? Would

rs24

Haimes - cross

1
2 they be counted as one stay or would each stay be
3 counted as a separate, independent stay?

4 A The final stay would have been the one included
5 as the amount, not the total. Not the summary of all
6 their stays.

7 Q If you had a man at the MCC the day it
8 opened and stayed for like six months and then left for a
9 day or a week and had been returned to the MCC and stayed
10 for two weeks, he would come out under your statistics
11 as having been a two-week stay?

12 A Or vice versa, he would have come for the
13 longer period of time and come back and that would have
14 been the period of time it showed, that is what we would
15 have recorded.

16 Q You didn't give any consideration then to
17 people who had spent perhaps all but a few weeks of that
18 year at the MCC as long as there had been a break at some
19 point. Then only part was counted?

20 A It wouldn't be fair to do it any other way.
21 That kind of event could come up at any time.

22 Q Fairness is a legal question we are going to
23 argue about.

4 A Statistically it wouldn't have worked out.

5 Q It wouldn't be fair if somebody spent all but

1 rs25
2 one week out of the year at the MCC to indicate that that
3 person spent 51 or 52 weeks at the MCC?

4 A It is like taking a crosscut in time.
5 Whatever shows up in that crosscut in time is what you
6 have to consider and let the chips fall where they may.
7 Otherwise what crosscut are you going to choose?

8 Q Isn't it true that the average that you
9 calculated included a large number of people who say were
10 arrested in the New York area for Federal crimes and
11 spent only maybe a matter of hours or a few days at the
12 MCC while they were posting bail?

13 MR. SCHAFFER: Objection, the document speaks
14 for itself. If Mr. Young wishes to show Mr. Haimes
15 the document on how many safekeepings there were --

16 THE COURT: Is that a category shown on there?

17 MR. SCHAFFER: Yes, it is, your Honor.

18 THE COURT: All right.

19 Q Let me put the question this way:

20 Isn't it true as a statistician who compiled
21 these statistics, that a large number of arrestees who
22 spent only a few hours at the MCC, a large number of
23 persons who say have just been convicted of a crime and
24 surrendered to begin serving their sentence and people
25 out after a few days, a large number of people who spent

ars

Haimes - cross

1 only a few hours or a few days in the MCC and were going
2 to go say from a New England institution to an institution
3 somewhere else in the country or going from an institution
4 somewhere else to a New England institution, would greatly
5 weigh down the average that you would conclude as a result
6 of your study?

7 A We took this into consideration. I looked
8 at the thing and in fact it brought the average up but
9 brought it up by, if I can remember the figure, brought
10 it up to 39 days. If we eliminated the short stay people
11 it brought the average to a month and nine days.

12 Q But that still, based on your study, talking
13 about the statistics, just say eliminating the safekeeps
14 and enroute?

15 A That is right.

16 Q If I went over to the MCC on a given day, say
17 August 13, the last day of the period that you considered
18 in your study and got the names of all the people who
19 were housed in the MCC on that day and then I determined
20 the date on which they entered the institution and then
21 I waited until all of them left the institution and saw
22 how many days every one of the people on this particular
23 day had stayed at the MCC, wouldn't it be true I would find
24 that more than four-fifths of the persons in the MCC on
25

1 ars

2 August 13, 1976 spent more than 26 days at the MCC?

3 A It shouldn't work out that way.

4 Q Why shouldn't it?

5 A Well, because when you are talking about a
6 large sample like the one we took, what you are doing is
7 whether you took the group of people from -- what would
8 make the difference is the long-term people who would
9 skew the whole average up.

10 Right now we have 20 people or 19 people,
11 some who are designated people and they would be at the
12 institution very long periods of time and they would just
13 kind of actually skew the heck out of the average and
14 which could be a kind of false implication because the
15 average really is an expectancy of what you find if you
16 walk into a particular situation.

17 For instance, in a schoolroom where you had
18 children of different age groups and what is the average
19 age of the room. You might have a couple of people held
20 over a long period of time that would skew your whole
21 finding and make the classroom look really bad in terms
22 of average. That is why we presented the median
23 which gives a little bit of a different prediction and
24 takes away the large confinement period, for instance.

25 Q Let me ask another related question.

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Haimes - cross

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Suppose I took an institution like Lewisburg and I attached an annex onto it and ran people through there with one day stays, say I ran one hundred people a day through there and most were on one day stays, wouldn't that reduce to a very large scale the average length of stay at Lewisburg?

A Sure, if you are depending on the group, that is your data. That is why I said I take that into effect by taking out our short stay people, then it depends on your total population. You just can't make that kind of estimate statistically because you have to know the total population and what happens when the group is running through.

Q If I did the study I described of taking one day and determining the length of stay of every person in the institution on that one day, isn't it true I would come up with a longer length of stay?

A I suggest, because of the fact that you don't have very many people from my experience -- that many people that are staying for long periods of time, it wouldn't significantly affect the average but -- it would but not significantly bring it up. It has to do with the number of people, not only the length of stay but the man days. You have to talk about the number of

1 jga

2 making? At least what do they say they were making
3 in terms of, you know, their salaries on the street?
4 This is one item particularly that is very vulnerable
5 because they lie like the dickens as far as how much
6 they earned before they came in.

7 Q Do you know that as a fact?

8 A Well, I checked on some people. Sometimes
9 you come across a huge figure and you are wondering
10 how the devil could that guy make that kind of money.
11 So you ask somebody, did so-and-so make that? "Ah,
12 that guy was with me in such-and-such a place, doing
13 this sort of thing."

14 It gets sort of hazy on certain items.
15 Age is something you can go with. If they yell you
16 their social security number, I think maybe 80
17 per cent of the time you can go with it. Their name
18 is usually pretty good, but sometimes we probably
19 have maybe 10, 15 per cent that lie about their
20 names.

21 Q How about their religion?

22 A Religion? Oftentimes we get a lot of
23 nothing on that. People are very sensitive about
24 telling you what their religion is.

25 Q But the ones that answer, do you have any

jqa

Language," and the second entry on that chart -- well, all of the entries after the first are for non-English languages.

Do you have any knowledge of whether the individuals listed under those categories also speak English?

A No hard knowledge. I know that many of our Puerto Ricans -- I know that Many of the Puerto Ricans are New York Puerto Ricans and they do know some English. Otherwise we would have had a hard time giving them the questionnaire.

Q The questionnaire was in English?

A Yes. It was only towards --

THE COURT: Mr. Schaffer, if, this afternoon, when you are off duty in this case, you call up Mr. Taylor and you say, "Have the unit managers give you the numbers for each unit of how many speak, read and write only Spanish," by tomorrow morning you'll have the number, and it will be pretty reliable. So if, instead of playing games, you would like the Court really to know what we are dealing with, you ought to go ahead and get the information.

MR. SCHAFER: Your Honor, it is not as easy to find that out as it may appear.

jga

1 THE COURT: Get somebody smart, like Miss
2 Cardamone, to go around and find out on each unit how
3 many read only Spanish and don't read English. I don't
4 know why it should be so hard. I really don't.
5 It has been done in my bilingual case by people less
6 bright than Miss Cardamone, and it doesn't take all
7 that long.
8

9 So I know direct you to find out as of
10 a day, any day you like, within the next week, and
11 report to me by affidavit, giving whatever basis you
12 want of how the information was gotten, what percentage
13 of the inmates in the MCC as of that day, giving the
14 numbers as well, read only Spanish and do not read English.
15 I'm sure you can do it.

16 MR. SCHAFER: Do you want reading or just
17 knowledge of the language?

18 THE COURT: No. I think reading is what
19 we are interested in.

20 Do you want something else? Because the
21 big issue that has been raised before me is whether you
22 should post these notices in Spanish.

23 MR. SCHAFER: I think there is also the
24 issue about the extent of staff knowledge of the
25 language in order to communicate orally. And what

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Haimes-redirect

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Q A third alternative is you can take that slice in time with all the people who are there on that given day and add to it how much time those people who were there currently will stay there?

A Yes. Except, researchwise, that would be almost an impossibility because that would require the researcher to be there as long as the longest member. In other words, in that cross section of time, if you have three or four people who were at the MCC for a year or two years, it means the research person would have to be there that long too or at least be in contact.

THE COURT: Look, Mr. Haimes, let me ask you: we know this is not true. But if people at the MCC spent time there in periods ranging from one day to 25 years, if they did, and after one year you just pulled the files of people who had gotten out, you would have a skewed picture of the length of stays in the MCC, isn't that right?

THE WITNESS: Only if you had people there for a long period of time. In other words, your Honor, if you had --

THE COURT: Just stay with me. Therefore, instead of bandying speculations back and forth

1 jga
2 with Mr. Schaffer, isn't the simpler solution for you,
3 trying to instruct a Court that has no real
4 sophistication in statistics, to do the slightly onerous
5 job I put to you, take the people who were in there on
6 August 13, 1976 and see how many of them had been in-
7 carcerated before August 2nd and follow them through
8 and see when they got out?

9 If it turns out that only one of them is
10 left now, your story is obviously accurate; he doesn't
11 affect the figures very much.

12 If it turns out that only two of them had
13 been in before August 2nd, your story is further
14 substantiated, isn't that so?

15 RHE WITNESS: Yes. I can almost tell
16 you that.

17 THE COURT: I know you can almost tell
18 me that. If you could tell me that authoritatively, I
19 could buy it. I don't want to kid you any more than
20 you want to kid me. I suspect you are right, but I
21 don't believe this record should go on your hunches or
22 mine. You seem to be writing it down. If you do
23 that, then we will have it and we won't have to
24 conjecture about it.

25 MR. SCHAFER: Along the same line, your

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2 a Commissioner on the National Commission on Causes &
3 Prevention of Violence and spent about 18 months or a
4 large part of 18 months in working with that Commission.

5 In 1970 I was approached by Mr. Carlson who
6 was then and continues to be Director of the Federal
7 Bureau of Prisons to be a member of the Federal Prison
8 Facility Advisory panel which met with the Bureau's planners
9 in trying to advise on the development of new kinds of
10 facilities in the Federal prison system.

11 In that capacity I met -- I forget the precise
12 frequency but at least every six months or so met some-
13 times with the architects at various centers. At one
14 point the Bureau flew a number of architects across the
15 country to visit various Federal institutions and that
16 included a stop in Topeka where I spent about a day with
17 them discussing various psychological aspects of prisoners
18 in a correctional setting.

19 In that setting I had an opportunity to make
20 some input on the design of such institutions such as the
21 new medical research facility at Butner, North Carolina
22 and in the model correctional institution at Pleasonton,
23 California. That is a new large almost college-like
24 campus design and then in the Federal correctional
25 centers at San Diego, Chicago and New York. All of these

ars Menninger - direct

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were in the planning stage during that period.

That participation continued until Congress passed an act which limited the number of advisory panels that could be set up by various Government agencies so that was disbanded at that point.

Subsequently, I was appinted by the Attorney General to be one of the five non-corrections citizen members of the Advisory Board of the National Institute of Corrections and was last year reappointed to that panel.

It is a body set up by Congress which has an Advisory Board of six ex officio Government officials, including the Chief Justice of the United States Board of Parole and representatives from the Federal Judicial Conference and the Director of the Bureau of Prisons and the head of LEAA and somebody from HEW. I forget the sixth.

Then there are five career correctional physicians who are members of the advisory panel and five citizen members who have some involvement with or had some interest in the area of corrections.

MR. SCHAFFER: Based upon Dr. Menninger's education, training and experience, we move that he be accepted by this Court as an expert in the field of

Menninger - direct

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law at least a substantial proportion of the population tends not to be offenders but people presumed to be innocent awaiting trial, would that be a factor you would want to take into account?

THE WITNESS: Well, again, it depends on if the primary function is a commitment to hold people for either the prosecuting agency or the Court or whatever, I have to acknowledge that the institution is going to have to be more secure, to be adopted to the most secure needs.

THE COURT: That is the jailkeeper's problem but you as a psychiatrist feel that you would want to take account of the expectation induced by the community principles in somebody who is being held not for punishment but simply to make sure that he is available for trial? Would that have any psychological significance to you in evaluating the impact of the prison experience on the individual?

THE WITNESS: That is a hard one to answer because --

THE COURT: If it were easy I wouldn't even bother you with it.

THE WITNESS: I think that if one is viewing it from the standpoint of psychological impact, part of my orientation is what are the realities that the individual

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2 is going to cope with and that expectation ordinarily
3 would be that if an individual is going to be brought in
4 somewhere and there is no clear definition, no clear
5 assurance of what would be involved, the question of how
6 how much you can differentiate, how much institutions
7 differentiate between somebody who is brought in for what
8 is presumably a fairly serious matter and separates them
9 off from somebody brought in for a relatively or non-
10 violent or less serious offense, conceivably I could see
11 some problems which could come if everybody is thrown
12 in exactly the same setting.

13 But this is the problem of every jail and I
14 don't know of anybody who has found a good answer for it
15 except that if you have an opportunity to have a unit which
16 is set aside in which those people who are accused of or
17 brought in with the accusation of more dangerous, violent
18 offenses are put in a separate area from those who are
19 brought in with lesser offenses.

20 THE COURT: I don't want to keep you and Mr.
21 Schaffer but this may be a matter of great interest to me
22 in deciding this case. What I am trying to get at
23 with your help is this:

24 It strikes me as a layman that if the community
25 says to somebody you are presumed to be innocent, we have

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2 no intention to punish you unless or until you are
3 convicted which we presume won't happen, if that person
4 is then incarcerated because he can't make bail, the
5 expectation on the community induced by the community
6 today, never mind what was in colonial times, it may be
7 greater in terms of what he believes the community owes him
8 in the sense of treating him with dignity and respect and
9 in conditions of comfort.

10
11 I'm asking you whether as a psychiatrist
12 interested in prisons would you deem that a significant
13 psychiatric factor in evaluating the facility for such
14 people as against a facility for people who are imprisoned
15 for punishment? That is what I am asking you. If the
16 drift of my question seems to suggest an answer that is
17 no matter, I want your view.

18 (Continued on next page.)

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A Well, I think one of the things that it --

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that is clear is that the community has a mixed view,

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and this is part of the problem, because the community

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on the one hand -- there is clear ambivalence. The

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community says people are innocent until proven guilty,

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but at the same time the community also says make sure

8

that danger are -- that we are protected from dangers.

9

And so that the individual in that situation, when

10

picked up, gets confronted with the mixed view of the

11

community. It gets played out. And I think it is

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true that a person who is -- that the ideal is that

13

a person who is not yet convicted should not necessarily --

14

that there might be different standards that one would

15

look at in adjudging: is this the ideal?

16

The question of how much damage there

17

may be to the individual psychologically is something

18

that is very hard to get some clear assessment if

19

there is some variation. I mean there is no question

20

that in some -- in most of the traditional jails where

21

everybody is thrown in kind of a lock-up situation or

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thrown into a bull pen with minimal supervision, that

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there can be some very traumatic experiences that

24

occur, and that obviously one would have a lot of ques-

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tions about that.

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2 The degree to which you can segregate out
3 those who have not been convicted and can at least seek
4 to make as many amenities available to them is going
5 to improve the situation. And I think there is a
6 reason to assume a difference if society is going to
7 try to be more consistent, but --

8 Q Is that reason psychiatric, do you think?
9 That is to say, is there anything psychiatric about the
10 judgment you just expressed.

11 A I'm not sure there really is That is,
12 from a psychiatric standpoint, if what one is saying is
13 to try to assess is, is there some kind of significant, last-
14 ing emotional trauma by virtue of being confined, one
15 may ge hard put to show that there is lasting damage.
16 There is certainly some temporary disruption, that's
17 true, with many kinds of changes. So I'm not sure
18 that psychiatric -- I can give you a psychiatric opinion
19 that he is going to answer the question in quite the
20 way that you would like.

21 Q Well, I just want whatever you can tell us.
22 Short of trauma do you have any categories that are
23 relevant to this situation? We have a number of people
24 every year, not a great number, but a number who sit in
25 the MCC for weeks or even months and then come to trial

Menninger-direct

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2 and then they are acquitted. Would it make a differ-
3 ence in your judgment with respect to psychological
4 impact of the experience on them whether they sense
5 their treatment as being the most minimal kind of
6 considerate confinement or a kind of confinement similar
7 to that given to convicted people?

8 A I think it could make some difference, yes.
9 The question of just how much in the long run would
10 be very hard to assess. But if you are talking about --
11 I would say that in my awareness of the circumstances
12 of the MCC as compared to the experience in the usual
13 jail there is a significant difference in the nature
14 of the experience simply reflected by the kind of
15 facility and an awful lot will then have to do more than
16 the facility in the attitude of the people toward them.
17 That is, if there is a constant recognition played out
18 in the attitudes of the personnel towards individu-
19 als. If the personnel make no clear distinction
20 between the two and treat all the same, as opposed to
21 personnel who can observe that these people, while accused,
22 are not convicted and therefore one has a different
23 expectation of them and a different attitude, because
24 oftentimes I'm reminded of a -- we focus oftentimes on
25 the physical facility and obscure the fact that the

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Menninger-direct

critical aspect most often in how people adapt is a function of the people around them.

It is sort of paraphrased in a statement that my uncle made one time, that people get well in a barn if you give you them the right treatment; that you don't have to have perfect facilities if you have personnel who operate in a given context with appreciation for the situation people are in.

BY MR. SCHAFER:

Q Dr. Menninger, there has been some discussion with the Judge, some reference made to such problems as adaptation and trauma and the like. Could you provide briefly a psychological definition of stress and of adaptation?

A Well, stress is a term that originally comes from -- is a shortened form of the word "distress," and it is a term that has one application in physics of strain put on elastic material under pressure. But in the sense of human behavior we look at it as the term for the tensions or pressures reflected in an individual which may come from either external or internal sources and which threatens the capacity to adapt and may -- usually we identify it in terms of when there is some failure to adapt, so that the

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A Yes, I have an opinion. I might start it first in terms of my experience at El Reno, where at that institution there was a range of facilities that ranged from the traditional cell block, both an inside cell block and outside, with windows, and some large dormitory areas. They had -- they had almost barracks, like, much like military type barracks used to be, in which there would be a hundred inmates in cots that may be four across, spread out, and then at the end of each building were the toilet facilities and there were open toilets, and the like.

I was never aware that one could identify any clear impact of that dormitory housing as to causing significant problems emotionally for the vast majority of individuals who passed through the institution. Everybody started in a dormitory. Now, it was clear that the inmates preferred the opportunity to have private quarters. So that as inmates advanced or demonstrated that -- the honor quarters were private quarters; and there were some other inmates -- there are always a certain proportion of individuals who for one reason or another can't effectively function in that setting. Sometimes it was because of pressures related to what would be seen. In the vernacu-

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lar they would be called weak inmates but they were really inmates who really were kind of inadequate people.

And they would get taken advantage of and would not

really be able to hold their own. Soemtimes they'd

get taken advantage of sexually. Sometimes it was

simply other ways that they were taken advantage of.

And so that there were some private quarters

that the institution had to maintain simply for a kind

of protection purpose. But in that context I was

never aware of either from the officers or from inmates

comint to me, either as medical officer or psychiatrist,

that there were rezl, significant emotional problems

caused by living in the dormitory. I know that my

initial feeling when I was there, particularly looking t

some of the facilities associated with it, was one that

it didn't fit my middle-class ethic, but I discovered

that I had a biased view and that for a number of the

inmates this was not an unfamiliar experience, nor was

it a threatening experience, nor was it in that sense as

much of a stress to them as it might have been to me

had I been put in the situation; that many came from

settings where there was a great deal of crowding in

their own home enviornment, where there was not much

privacy, and so that in that context I don't know that

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Menninger-direct

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I can say that dormitory life per se is -- could be assumed to be an intolerable stress or would cause great harm.

This acknowledges that there can be some who will make it clear that they can't tolerate it but usually you -- they are fairly obvious and you can separate those people out.

Q Turning specifically to your observations of the 11 South unit at the New York MCC in your visits there, did you observe any types of behavior or activities which would indicate to you that the conditions in 11 South were having an intolerable psychological effect upon the inmates housed there?

A There is something that, as I try to look at both the kind of atmosphere on the unit and the interactions that were taking place, I don't think one can make a hard and fast answer and say that it was absolutely intolerable.

Certainly the noise level at the time I visited was somewhat greater than on the other units, which would be inevitable with the higher number of people. But the degree to which people were engaged in reasonable activity, I don't know that I could say automatically that this was something that you would

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assume is a serious and detrimental effect.

Certainly the inmates, as I talked to them, expressed a number of complaints about the experience and the question of how much to say that some of the experiences would cause irreparable harm I think one has to be hard put to say this. Certainly there are inconveniences which come about from that kind of experience, but, again, it depends in part on the length of stay that one -- if one is subjected to this particular living accommodation for months on end, then I could see that there might be some irritability and pressures that might develop, but I would have my doubts that a short-term experience in that unit is going to be of irreparable harm.

Q Dr. Menninger, I'd like you to assume that on occasions inmates are housed in the balcony areas of the units at the MCC because of their numbers exceeding the capacity of the rooms and that on these occasions they are given folding army-type cots to sleep on, and that as rooms become available they are moved off of those balcony areas, and that their housing on those balcony areas may last anywhere from a day or a few days to as long as several weeks. Do you have an opinion as to whether these conditions would

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impose a level of stress upon inmates which would compromise their mental well being?

A Well, again, in any kind of adaptation to stressful situations a lot of factors come into play in determining the capacity of the person to tolerate it. One of them is the degree to which one can find some rationale as to what happens and understand it. For instance, if I can draw a parallel, if I have to go to the hospital and they put me in a hall bed when there is all kinds of room in the hospital it's a different matter than if I go in and I know that every room in the hospital is full and the hospital is experiencing a crisis of overpopulation, and their only option is to then set up additional space to allow accommodation to meet the realities of the situation. And if I can appreciate that's a reality that wasn't arbitrarily set up, that is not necessarily at the hands of the keepers, it isn't the fault of the institution in which I'm a part, but is due to external factors, and I have a reasonable capacity to understand and appreciate what's happening, then it's going to be a lot more tolerable.

Add to that, again, the question of the -- how the personnel deal with the issue, and how much there

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2 are efforts then to be more understanding or whatever,
3 that again will enhance the capacity of the individual
4 to adapt. So that if one is given a situation where
5 there is a clear reality that forces it and where the
6 reality is rather obvious to all concerned, and
7 where there is a kind of mutual acceptance that this
8 is not the desirable state of affairs, then I would assume
9 that would change the nature of stress on the individual
10 who is experiencing it, and the likelihood is that most
11 people could tolerate and deal with it without suffer-
12 ing irreparable damage.

13 Q Dr. Menninger, I'd like you to assume
14 that the practice at the MCC is an individual is confined
15 to a particular unit, that most of his activities in
16 the way of educational activities, meals, socializing
17 take place within that specific unit; that he may leave
18 the unit only under escort and only for purposes of
19 making medical visits, going to the roof recreation
20 area, which is scheduled once a day for approximately
21 an hour, and also for making court appearances which
22 may occur as the court schedules.

23 I'd like to ask you whether you have an
24 opinion as to whether that type of confinement, given
25 the architectural and program aspects of the modular

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units imposes a level of stress upon inmates such as to compromise their mental well being.

A Yes, I have an opinion, and I'm not aware that there is any clear evidence that an individual in that kind of setting, with some opportunities to get off the unit, whether recreation or those you have stated, is going to be, again, irreparably harmed. That is, there is a state that's termed in the vernacular cabin fever, which is applied to individuals who are confined in a close space for a long period of time. It is primarily noted in Alaska and the Yukon in the wintertime when people are limited and can't get out, and it is most evident in mothers of children, who have children who can't get out and you have a great deal of activity in a small space. Individuals in those settings can get irritable and there is a sense of boredom and there can be transient emotional disruption that usually clears when they have an opportunity to get out. It clears when springtime comes in the North.

If there are opportunities along the way to get some variation in experience and to have some opportunities for physical activity or for some kind of outlets that will provide a variation in the daily